TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~302~~ 177

WILLIAM BUTLER AND W. T. HICOX, PLAINTIFFS IN ERROR,

vs.

JOSIAH MAPLES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED DECEMBER 18, 1868.

SUPREME COURT OF THE UNITED STATES.

No. 393.

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1 September term, 1867.

UNITED STATES OF AMERICA:

Be it remembered that the circuit court of the United States for the district of West Tennessee was begun and held at the federal court-rooms in the city of Memphis, in said district, on the first Monday, it being the second day of September, in the year of our Lord one thousand eight hundred and sixty-seven. Present and presiding, the Hon. Connally F. Trigg, United States district judge for the districts of Tennessee. Present, also, A. S. Mitchell, clerk.

The President of the United States of America to the marshall of the district of West Tennessee, greeting:

You are hereby commanded to summon H. E. Bridge, Wm. Butler, W. T. Hecox, Albert Pierce, partners, under the name of H. E. Bridge & Co., citizens of the State of Illinois, if to be found within your district, to appear before the judge of the circuit court of the United States, in the sixth circuit, for the district of West Tennessee, at Memphis,
2 on the first Monday in September next, and then and there to answer Josiah Maples, a citizen of the State of Tennessee, of a plea that they render to him $11,500, which they owe to & detain from him to his damage $1,000.

Herein fail not, and have you then and there this writ.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this 1st Monday in March, in the year 1864, and of the indepence of the United States the eighty

[CIRCUIT COURT SEAL.] A. S. MITCHELL,
Clerk of said Court.

No. 37.

JOSIAH MAPLES
vs.
H. E. BRIDGE & CO. } Summons.

This summons issued on the 7th day of July, 1864—A. S. Mitchell, clerk—came to hand same day; issued and executed same day, July 14, 1864, on Wm. Butler and W. T. Hecox, the other named defendant, and delivered them at the same time a copy of the declaration in the case, this July 14, 1864.

J. L. WILLIAMSON,
Marshall.

H. G. SMITH, *Attorney.*

3 Know all men by these presents, that Josiah Maples & Henry G. Smith held and firmly bound unto H. E. Bridge & Co., in the sum of two hundred and fifty dollars, to be void on condition that Josiah Maples do pay and satisfy all costs that may accrue in his behalf in the prosecution of a suit this day commenced by him in the circuit court of the United States for the district of West Tennessee, at Memphis, against H. E. Bridge & Co., on failure of the plaintiff to prosecute his said suit with effect; and also, on failure of the defendant, if convicted, to pay said costs.

Witness my hand and seal this 7th day of July, 1864.

JOSIAH MAPLES, [SEAL.]
By W. G. SMITH.
HENRY G. SMITH.

[50-c. revenue stamp.]

In the circuit court of the United States for the district of West Tennessee.—September term, A. D. 1864.

4 Josiah Maples, who is a citizen of the State of Tennessee, complains of Wm. Butler, H. E. Bridge, W. T. Hicox, & Albert Pearce, partners, trading under the name of H. E. Bridge & Co., & who are citizens of the State of Illinois, who were summoned to answer of a plea of debt; that the defendants, partners as aforesaid, are indebted to the plaintiff $11,000 for 27,501 pounds of lent cotton, at the rate of 40 cents per pound, by the plaintiff to the defendants heretofore sold & delivered [delivered] at their request. By reason whereof the defendants, partners, are liable to pay the plaintiff the said money. But the defendants have not paid and will not pay the same to the plaintiff, damage $1,000, & therefore he suest.

HENRY G. SMITH,
Att'y for Pl'ff.

Delivered a copy of this declaration to the defendants Wm. Butler and W. T. Hicox, July 14th, 1864.

J. L. WILLIAMSON,
Marshall.

The United States of America, in the circuit court of the United States, in the sixth circuit for the district of West Tennessee, at Memphis.—September term, 1864.

5 No. 37.

JOSIAH MAPLES
vs.
H. E. BRIDGE & CO.

Came the defendants William Butler and W. T. Hickock, by their attorney, and defend the wrong and injury, when, &c., and say that they do not owe the said sum of money above demanded, or any part thereof, in manner and form as plaintiffs hath above thereof complained against them; and of this the put themselves upon the courtry.

KORTRECHT & CRAFT,
Attorneys for Def'd's Butler & Hickock.

And the plaintiff doth the like.

H. G. SMITH, *Pl'f's Atto.*

6 And on Saturday, the 28th day of September, 1867, the same being one of the days of the September term, 1867, the following proceeding was had in said case and entered of record, to wit:

JOSIAH MAPLES
vs.
H. E. BRIDGE, WM. BUTLER, W. T. HICOX, & ALBERT PEARCE, firm of H. E. Bridge & Co. } No. 7.—Assumpsit.

This day came the parties by their attorneys, and thereupon the plaintiff takes a non-suit as to defendants H. E. Bridge and Albert Pearce. It is therefore considered by the court that said defendant recover of plaintiff and of Henry G. Smith, his security, the cost of making them

parties, and that execution issue therefor; and thereupon, to try the issue joined between plaintiff and defendants Butler and Hicox, came a jury of good and lawful men, to wit: T. A. Hamilton, P. Beacher, S. R. Wood, C. F. Chamberlain, A. Renkert, R. H. Vance, N. F. Morgan, Chas. Walsh, James Kimball, Gus. Offeur, Z. K. Hawley, and Wm. Chase, who
7 were elected, tried, and sworn well and truly to try the issue joined between the parties, and a true verdict to render; and there not being time to complete the trial of said cause on to-day, the same is adjourned over to Monday morning next.

MONDAY, *Sept.* 30, 1867.

JOSIAH MAPLES *vs.* WM. BUTLER & W. T. HECOX. } No. 7.—Assumpsit.

Came the parties by their attorneys, and also the jury in this cause, when, by consent of the parties, the farther consideration of this case is continued to to-morrow morning.

TUESDAY, *Oct.* 1*st*, 1867.

JOSIAH MAPLES *vs.* WM. BUTLER & W. T. HICOX. } No. 7.—Assumpsit.

Came the parties by their attorneys, and also the jury in this case, when, after hearing the evidence in the case and a portion of the argument of counsel thereon, there not being time to complete said trial on to-day, the said is adjourned over to to-morrow morning.

8 WEDNESDAY, *Oct.* 2*nd*, 1867.

JOSIAH MAPLES *vs.* WM. BUTLER & W. T. HICOX. } No. 7.—Assumpsit.

Came the parties by their attorneys, and also the jury in this case, when the consideration of the same was resumed; and there not being time to complete the trial of this cause on to-day, the same is adjourned to to-morrow morning.

TUESDAY, *Oct.* 3, 1867.

JOSIAH MAPLES *vs.* WM. BUTLER & W. T. HECOX. } No. 7.—Assumpsit.

This day came the parties by their attorneys, and also the jury in this cause, when the consideration of the same was resumed; and the
9 jury, having heard the argument of counsel and charge of the court, on their oath say they find for the plaintiff, and assess his damages by reason of the premises to nine thousand three hundred and thirty-six dollars. It is, therefore, considered by the court that plaintiff recover of defendants the damage so assessed by the jury as aforesaid and the costs of this suit, and that execution issue.

MONDAY, *Oct.* 14*th*, 1867.

JOSIAH MAPLES *vs.* WM. BUTLER & W. T. HECOX. } No. 7.—Assumpsit.

This day came the defendants by their attorneys, and moved the court

for a new trial in this cause, and the court takes time to consider on said motion.

MONDAY, *Feb'y* 10, '68.

JOSIAH MAPLES
vs.
WM. BUTLER & W. T. HICOX. } No. 7.—Assumpsit.

This day came the parties by their attorneys, and thereupon the defendant's motion for a new trial was taken up; and argument of counsel being heard, and the court fully advised as to the matters arising thereon, it is considered by the court that said motion be overruled.

10 WEDNESDAY, *Feb. 12th*, 1868.

JOSIAH MAPLES
vs.
WILLIAM BUTLER & W. T. HECOX. } No. 7.—Assumpsit.

This day came the defendants by their attorneys, and tendered their bill of exceptions, praying that the same be signed and sealed and made a part of the record in this cause, which was accordingly done.

11 In circuit court of U. S. for district of West Tennessee, at Memphis.—September term, 1867.

JOSIAH MAPLES
vs.
H. E. BRIDGE & CO. }

Bill of exceptions.

Be it remembered that on the trial of this cause, the pleadings were read, and plaintiff dismissed his suit as to all of the defendants named in the declaration, except William Butler and W. T. Hecox. The plaintiff then read the deposition of B. Bolling as evidence in the cause, in the words and figures following, to wit:

In U. S. circuit court at Memphis.

JOSIAH MAPLES
vs.
WM. BUTLER *et als.* }

N. MARTIN
vs.
SAME. }

I, the undersigned, Bernard Bowling, a witness for the plaintiffs in the above cause, do make oath that I was well acquainted with William Butler in the years 1863 & 1864, at Memphis; and that he, with H. E. Bridge and Albert Pearce, were partners in the cotton business, under the name of H. E. Bridge & Co. (Whether there were other partners, I do not know.) And that they followed that business at Memphis. Their place of business was at the corner of Front & Jefferson streets, with C. De Loach, now deceased, and at present occupied by E. M. Apperson & Co. They ran several steamboats in their business.
12 Among them I now only remember the Progress. From conversations had with Wm. Butler, I learnt that he and his partners had

branch-houses at St. Louis and New York. My connection with the Treasury Department of U. S. at Memphis lasted over two years, during the first part of which I saw Wm. Butler & Albert Pearse almost daily.

B. BOWLING.

I further state that I never knew H. E. Bridge personally, nor ever saw him to my knowledge, but from Wm. Butler's statements learnt him to be his (Butler's) partner.

B. BOWLING.

Sworn to before me this 23d Sept., 1867.

ISAAC MORRISON,
U. S. Com'r.

Filed Sept. 23d, 1867.

A. S. MITCHELL, *Clerk*,
ISAAC MORRISON, *D. C.*

The plaintiff then introduced, as a witness in the cause, R. W. Lamb, who testifies as follows:

I knew W. K. Houston, who formerly lived in Memphis. I have heard three or four times that he is dead. I heard that he was dead two or three years ago, and have never heard since of his being alive.

A certain paper writing was then shown to this witness, who proved that he knew the handwriting of W. K. Houston, and that the signature "W. K. Houston," as a subscribing witness to said paper, is in the
13 genuine hand writing of said Houston, and is said Houston's genuine signature.

Plaintiff then offered in evidence the said paper writing so exhibited to the witness Lamb, in the words and figures following, to wit:

An article of agreement made & entered into the 16th day of October, 1863, by and between H. E. Bridge & Co., of Saint Louis, Mo., and Daniel Shepherd, of Desha County, Arkansas, for the purpose of purchasing R. C. Stone's and such other cotton as said Shepherd may be able to purchase in said county and vicinity, under the conditions and restrictions hereinafter set forth.

The said H. E. Bridge & Co. have this day furnished said Shepherd with four thousand ($4,000^{00}$) dollars, the receipt whereof is hereby acknowledged by him, and are to furnish him such other money from time to time as may be necessary to purchase said cotton. The said Shepherd is to buy said cotton if it can be bought at the price herein set forth, and as much more as he can on the best possible terms, not paying an average of more than thirty cents per pound for middling cotton, and lower, in proportion to the grade, to be delivered at such times and places of shipment as may be agred upon. Said Shepherd is to pay as little as possible on said cotton till it is delivered on a boat, or within protection of a gunboat; and when said cotton is thus delived on the boat and paid for, the property and ownership thereof is to vest exclusively in said H. E. Bridge & Co., except as herein provided for his share of the profits.

14 Said H. E. Bridge & Co. are to ship said cotton to Memphis, Tenn., and sell the same to the best possible advantage; and after reimbursing themselves—the purchase-money, the cost of hauling, shipping, drayage, commissions, &c.—are to pay said Shepherd one-eighth part of the net profits. It is expressly understood that all contracts, shipments, permits, &c., necessary to purchase and get said cotton

to Memphis, are to be in the name of said Shepherd; and that said H. E. Bridge & Co. may thus use his name when necessary.

Witness our hands this day & year above written.

Duplicates signed. H. H. BRIDGE & CO.,
By W. BUTLER.
DANIEL SHEPHERD.

Attest: W. R. HOUSTON.

The said witness, R. W. Lamb, being still on the stand, then proved for plaintiff that he was well acquainted with d'f'd't Wm. Butler, and with the handwriting of said Butler, and that the signature attached to said paper so read to the jury, thus, "H. E. Bridge & Co., by W. Butler," is in the genuine handwriting of said Butler.

Plaintiff then offered in evidence the deposition of George N. Carleton. To the reading of this deposition in evidence defendant objected, because it proves the issuance of a permit to H. E. Bridge & Co., and not to Daniel Shepherd; insisting that if it was intended by
15 plaintiff to rely upon a purchase of cotton made by Bridge & Co., by Daniel Shepherd, under the written agreement or power of attorney, the permit to make such purchase must be, according to the terms of said agreement, in the name of Daniel Shepherd. And defendant further objects to the readingof the deposition of said Carleton in evidence, on the ground that it was not competent to prove the official act of said Carleton in granting a permit, without producing the books or official records of the office in which the permit was granted as an official act; or by proof of the loss or inaccessibility of said books, laying the foundation for such secondary evidence. But the court, (defendant's admitting that notice to produce all permits appertaining to the case had been served upon them by p't'ff before the trial,) overruled both of the objections so made by defendant, and allowed the said deposition to be read. To the judgment of the court, overruling his said objections, and admitting the said deposition of the said Carleton, defendant excepted at the time, and reserved the benefit of his exception.

Plaintiff then read to the jury the deposition of the said George N. Carleton, in the words & figures following, to wit:

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
City, County, & State of New York, ss:

Be it remembered that on this 22d day of March, in the year of
16 our Lord one thousand eight hundred & sixty-six, I, John A. Osborne, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me at my office, at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, George N. Carleton, to testify, and the truth to say on the part and behalf of the plaintiff in a certain suit or matter of contro-

versy now depending and undetermined in the circuit court of the United States for the district of West Tennessee, at Memphis, wherein Josiah Maples, plaintiff, vs. William Butler and W. T. Hicock, defendants; and the said George N. Carleton, being about the age of forty-eight years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of
17 controversy aforesaid, I did carefully examine the said George N. Carleton, and he did thereupon depose, testify, and say as follows, viz.:

Question 1st. What is your name, residence, and present occupation?

Answer 1st. My name is George N. Carleton; residence, New York City; and present occupation, merchant.

Question 2d. In 1863, and about the month of November in that year, were you acquainted with the defendants?

Answer 2d. I was; very well.

Question 3d. At that time what was your occupation or business?

Answer 3d. I was special agent of the Treasury Department for the district of West Tennessee, and acting surveyor of customs at Memphis, Tennessee, having been appointed by the Secretary of the Treasury November 5th, 1863.

Question 4th. As such agent of the Treasury Department had you any transactions with the defendants, or either of them? And, if so, please state when & what.

Answer 4th. About the month of November, 1863, William Butler, one of the defendants, applied to me for a "permit" for the purchase and transportation of cotton in the then insurrectionary districts of the
18 United States. I thereupon issued to H. E. Bridge & Co., of St. Louis, Missouri, at the request of said Butler, who, I understood, was a copartner in the said firm of Bridge & Co., upon an "authority" issued to them by Thomas H. Yeatman, esq., assistant special agent of the Treasury Department, a "permit" to purchase and transmit to market cotton within the lines of federal military occupation, first special agency, bearing date of November 17th, 1863, to the amount of fifteen hundred (1,500) bales. The first special agency comprised the district of the United States west of the Alleghany Mountains, known as the valley of the Missisippi, and extending southward so as to include so much of the States of Alabama, Mississippi, Arkansas, and Louisiana as was occupied by the national forces operating from the north.

Question 5. State as nearly as you can the contents of the permit issued by you to H. E. Bridge & Co., of which you have testified in your answer to the fourth interrogatory.

Answer 5. I am unable to state the contents of that permit, because quite lengthy; but M. M. Griffin, of Memphis, Tennessee, formerly cashier in the custom-house at Memphis, can furnish printed forms, which are identical, so far as the printed form is concerned, with the "permit" issued by me on the 17th of November, 1863, to E. H.
19 Bridge & Co., of St. Louis, Mo. There was but one printed form of a permit, which form was invariably used by me, the blanks therein being filled up with the names of the parties, the kind of product, the amount, and the territory.

GEORGE N. CARLETON.

Subscribed & sworn to before me this 22d day of March, A. D. 1866.

JOHN A. OSBORN,
U. S. Com'r.

to Memphis, are to be in the name of said Shepherd; and that said H. E. Bridge & Co. may thus use his name when necessary.

Witness our hands this day & year above written.

Duplicates signed. H. H. BRIDGE & CO.,
By W. BUTLER.
DANIEL SHEPHERD.

Attest: W. R. HOUSTON.

The said witness, R. W. Lamb, being still on the stand, then proved for plaintiff that he was well acquainted with d'f'd't Wm. Butler, and with the handwriting of said Butler, and that the signature attached to said paper so read to the jury, thus, "H. E. Bridge & Co., by W. Butler," is in the genuine handwriting of said Butler.

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Plaintiff then read to the jury the deposition of the said George N. Carleton, in the words & figures following, to wit:

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
City, County, & State of New York, ss:

Be it remembered that on this 22d day of March, in the year of
16 our Lord one thousand eight hundred & sixty-six, I, John A. Osborne, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me at my office, at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, George N. Carleton, to testify, and the truth to say on the part and behalf of the plaintiff in a certain suit or matter of contro-

versy now depending and undetermined in the circuit court of the United States for the district of West Tennessee, at Memphis, wherein Josiah Maples, plaintiff, vs. William Butler and W. T. Hicock, defendants; and the said George N. Carleton, being about the age of forty-eight years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of
17 controversy aforesaid, I did carefully examine the said George N. Carleton, and he did thereupon depose, testify, and say as follows, viz.:

Question 1st. What is your name, residence, and present occupation?

Answer 1st. My name is George N. Carleton; residence, New York City; and present occupation, merchant.

Question 2d. In 1863, and about the month of November in that year, were you acquainted with the defendants?

Answer 2d. I was; very well.

Question 3d. At that time what was your occupation or business?

Answer 3d. I was special agent of the Treasury Department for the district of West Tennessee, and acting surveyor of customs at Memphis, Tennessee, having been appointed by the Secretary of the Treasury November 5th, 1863.

Question 4th. As such agent of the Treasury Department had you any transactions with the defendants, or either of them? And, if so, please state when & what.

Answer 4th. About the month of November, 1863, William Butler, one of the defendants, applied to me for a "permit" for the purchase and transportation of cotton in the then insurrectionary districts of the
18 United States. I thereupon issued to H. E. Bridge & Co., of St. Louis, Missouri, at the request of said Butler, who, I understood, was a copartner in the said firm of Bridge & Co., upon an "authority" issued to them by Thomas H. Yeatman, esq., assistant special agent of the Treasury Department, a "permit" to purchase and transmit to market cotton within the lines of federal military occupation, first special agency, bearing date of November 17th, 1863, to the amount of fifteen hundred (1,500) bales. The first special agency comprised the district of the United States west of the Alleghany Mountains, known as the valley of the Missisippi, and extending southward so as to include so much of the States of Alabama, Mississippi, Arkansas, and Louisiana as was occupied by the national forces operating from the north.

Question 5. State as nearly as you can the contents of the permit issued by you to H. E. Bridge & Co., of which you have testified in your answer to the fourth interrogatory.

Answer 5. I am unable to state the contents of that permit, because quite lengthy; but M. M. Griffin, of Memphis, Tennessee, formerly cashier in the custom-house at Memphis, can furnish printed forms, which are identical, so far as the printed form is concerned, with the "permit" issued by me on the 17th of November, 1863, to E. H.
19 Bridge & Co., of St. Louis, Mo. There was but one printed form of a permit, which form was invariably used by me, the blanks therein being filled up with the names of the parties, the kind of product, the amount, and the territory.

GEORGE N. CARLETON.

Subscribed & sworn to before me this 22d day of March, A. D. 1866.

JOHN A. OSBORN,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of said deposi-
20 tion named, and that he resides in the city of New York, more than one hundred miles from Memphis, Tennessee, the place where the trial of the above cause is expected to be heard.

I further certify that no notification of the time and place of taking the said deposition, signed by me, was made out and served on the adverse party, or his agent or attorney, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit; because neither the adverse party, his agents, or attorneys, were within one hundred miles of New York City, the place of taking of this deposition. I further certify that on the 22d day of March, in the year of our Lord one thousand eight hundred and sixty-six, I was attended by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing, in the presence of the witness, and from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up and directing the same, with my own hand, to the court for which the same was taken; and I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.
21 In testimony whereof, I have hereunto set my hand & seal this 22d day of March, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninetieth.

[SEAL.] JOHN A. OSBORN,
United States Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

[5-ct. stamp.]

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed deposition & certificate, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner duly appointed by the circuit court of the

United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court, this 22d day of March, in the year of our Lord 1866, and of the independence of the United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-c. stamp.]

22 Plaintiff then offered in evidence the treasury regulations of 1863 & 1864, and read the same to the jury, in the words & figures following, to wit:

23 By the President of the United States.

A Proclamation.

Whereas, in pursuance of an act of Congress, approved July 13th, 1861, I did, by proclamation, dated August 16th, 1861, declare that the inhabitants of the States of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Texas, Arkansas, Mississippi, and Florida, (except the inhabitants of that part of Virginia lying west of the Alleghany Mountains, and of such other parts of that State and the other States hereinbefore named as might maintain a loyal adhesion to the Union and the Constitution, or might be from time to time occupied and controlled by forces of the United States engaged in the dispersion of said insurgents,) were in a state of insurrection against the United States, and that all commercial intercourse between the same and the inhabitants thereof, with the exceptions aforesaid, and the citizens of other States and other parts of the United States, was unlawful, and would remain unlawful until such insurrection should cease or be suppressed, and that all goods and chattels, wares and merchandise, coming from any

24 of said States, with the exceptions aforesaid, into other parts of the United States, without the license and permission of the President, through the Secetary of the Treasury, or proceeding to any of said States, with the exceptions aforesaid, by land or water, together with the vessel or vehicle conveying the same to or from said States, with the exceptions aforesaid, would be forfeited to the United States;

And whereas experience has shown that the exceptions made in and by said proclamation embarress the due enforcement of said act of July 13th, 1861, and the proper regulation of the commercial intercourse authorized by said act with the loyal citizens of said States:

Now, therefore, I, Abraham Lincoln, President of the United States, do hereby revoke the said exceptions, and declare that the inhabitants of the States of Georgia, South Carolina, North Carolina, Tennessee, Alabama, Louisiana, Texas, Arkansas, Mississippi, Florida, and Virginia, (except the forty-eight counties of Virginia designated as West Virginia, and except, also, the ports of New Orleans, Key West, Port Royal, and Beaufort in North Carolina,) are in a state of insur-

25 rection against the United States, and that all commercial intercourse, not licensed and conducted as provided in said act, between the said States and the inhabitants thereof, with the exceptions aforesaid, and the citizens of other States and other parts of the United States, is unlawful, and will remain unlawful until such insurrection shall cease or has been suppressed, and notice thereof has been duly given by proclamation; and all cotton, tobacco, and other products, and all other goods and chattels, wares and merchandise, coming from any of said States,

with the exceptions aforesaid, into other parts of the United States, or proceeding to any of said States, with the exceptions aforesaid, without the license and permission of the President, through the Secretary of the Treasury, will, together with the vessel or vehicle conveying the same, be forfeited to the United States.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed. Done at the city of Washington this thirty-first day of March, A. D. 1863, and of the independance of the United States of America the eighty-seventh.

ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD,
Sec. of State.

26

EXECUTIVE MANSION,
Washington, Sept. 11th, 1863.

The following revised regulations of the Secetary of the Treasury, having been seen and considered by me, are hereby approved.

ABRAHAM LINCOLN.

Trade regulations prescribed by the Secetary of the Treasury for the government of the limited commercial intercourse licensed by the President, between the citizens of loyal States and the inhabitants of States and parts of States heretofore declared to be in insurrection, as revised and republished Sept. 11th, 1863.

I. The States and parts of the States declared to be in insurrection, between which and the citizens of loyal States commercial intercourse has been or may be licensed by the President, to be conducted and carried on in pursuance of regulations and rules prescribed by the Secetary of the Treasury, are hereby divided into districts, called special agencies, to which supervising special agents, appointed by the Secetary, are assigned.

27 II. The first special agency comprises the district of the United States west of the Alleghany Mountains, known as the valley of the Mississippi, and extending southward so as to include so much of the States of Alabama, Mississippi, Arkansas, and Louisiana as is or may be occupied by national forces operating from the north.

The fifth special agency comprises the State of Texas, and so much of the States of Louisiana, Arkansas, Alabama, and Mississippi as is or may be within the lines of the national forces operating from the south.

III. Supervising special agents will supervise within their respective agencies, the execution of these regulations; make, and from time to time change, such local rules not inconsistent with them as may be proper for that purpose, and temporarily suspend or qualify the authority to grant permits, if the public interest shall require it, subject to the approval of the Secetary of the Treasury; and they will confer with generals commanding departments, and naval officers commanding within their

28 agencies, and obtain, as far practicable, their sanction to such action as may affect their military or naval movements, and carefully avoid all interference with military or naval operations prosecuted by them.

IV. These regulations and local rules, prescribed by the several supervising special agents for their respective agencies, will be carried into effect by assistant special agents, local special agents, and agency

aids. Local special agents will take the place and perform the duties of the boards of trade heretofore authorized. Assistant special agents will be appointed by the Secetary of the Treasury; local special agents and agency aids will be appointed by the supervising special agents or assistant special agents, as under Regulation XXX, subject to the approval of the Secetary.

VI. The officers of the Treasury Department authorized to grant permits to districts in States or parts of States heretofore declared to be in insurrection, but where commercial intercourse has been
29 or may be licensed by the President, under regulations of the Secetary of the Treasury, are the [the] surveyors of the customs at Pittsburg, Wheeling, Cincinnati, Madison, Louisville, New Albany, Evansville, Paducah, Cairo, Quincy, St. Louis, Nashville, Memphis, and Baltimore; the collectors of customs at Philadelphia, Georgetown, Beaufort in North Carolina, and Port Royal in South Carolina; and the collector of internal revenue at New Orleans; other officers will be designated to grant permits should the public interest require it, and no permit will be granted except by such officers as shall be authorized by the Secetary of the Treasury, or such as are approved by him.

XX. All proper and loyal persons may apply, in the prescribed form, to the proper supervising special agent, or an assistant special agent designated by him, for authority to purchase, for money other than gold or silver, any of the products of the country within the lines of national military occupation in his agency, except when prohibited by the general commanding department, or other special military order, and to transport the same to market; and on making and filing with
30 such agent an affidavit, in the prescribed form, and executing a bond with penalty and sureties to be approved by said agent, and conditioned that he will pay or secure all fees required by regulations; that he will not purchase products at any place other than that named in the authority, or engage, directly or indirectly, in prohibited trade; and that no military, naval, or civil officer or person prohibited by law, or by order of the President, or of military or naval commanders having proper authority, from being interested in the property purchased by him, shall be so interested therein, the supervising special agent, or assistant special agent designated by him, if he deems it expedient, may authorize the proper officer to permit, on payment or security of the prescribed fees, the purchase and transportation of products as applied for, except articles prohibited. Upon presentation of such authority to any officer named in Regulation VI, he may issue a permit for the purchase, transportation, and sale of products specified in pursuance of the terms of the authority; but before diversing it, he will require the prescribed fees to be paid, or a bond therefor to be executed to the United States, with penalty and sureties approved
31 by him, conditioned that the fees for each shipment made under the permit shall be paid to him or some other proper officer at the time, or within two days after such shipment shall be made; and that immediately after the making of any shipment, by land or water, under the permit, notice of such shipment shall be forthwith given to the officer issuing the permit, which notice shall specify the date & place of shipment, and contain or be accompanied by a description of the property and the marks thereon, and a statement of its destination and the route thereto; and that upon its arrival at any port where there is an officer of customs, a similar report shall be forthwith made

to him. If any person obtaining a permit, and paying the fees therefor, shall purchase or transport no merchandise under the same, or a less quantity than is permitted, the fees paid, or the proper proportion thereof, shall be refunded on application and due showing to the proper supervising special agent. Any neglect on the part of the person permitted to purchase and transport, or of any one acting for him, to comply with regulations and local rules, or with the conditions of the bond to the permit officer, shall work immediate forfeiture of all
32 rights under the authority or permit, and any property purchased or transported under the same after such neglect shall be forfeited to the United States.

XXI. Every permit to purchase or sell cotton, tobacco, or other merchandise within any place or section in a State heretofore declared in insurrection, after commercial intercourse therewith shall have been permitted by the Secetary of the Treasury, and every permit to transport the same thereto, therein, or therefrom, shall clearly define the character and quantity of the merchandise so permitted to be sold, purchased, or transported, and the place or section within the same may be purchased or sold, and to and from which the same may be transported; and each person shall, before receiving such permit, make affidavit that he is in all respects loyal and true to the government of the United States; that he will faithfully conform to the proclamations and orders of the President of the United States and of the military governors and generals exercising authority under him, and to
33 department regulations authorized by law; and that he will at all times, by his conduct and conversation, and by every other means he can properly use, aid in suppressing the rebellion and restoring obedience to the Constitution and laws of the United States.

L. These regulations shall supersede those of March 31, 1863, and all others conflicting herewith, affecting commercial intercourse with States declared in insurrection; and all permits hereafter granted by any officer of the Treasury Department will be granted in pursuance of them and of the local rules authorized by them, or by virtue of authority hereafter given by the Secetary of the Treasury; but all permits granted and acts done in persuance of former regulations shall be valid and effectual until the 15th day of October, 1863, unless the regulations shall have been sooner received and made known at the place of such permits or acts.

34 Plaintiff then offered in evidence and read to the jury the deposition of Joseph Branch, in the words & figures following, to wit:

JOSIAH MAPLES
vs.
H. E. BRIDGE & CO.

Joseph Branch, being duly sworn, upon his solemn oath, deposeth that on or about the 8th of September, A. D. 1863, the confederate forces evacuated Little Rock and all the country south of the Arkansas River, and fell back through Washington and southwestern portion of the State to Red River and into Texas; that Washington became the headquarters of the army; that in the month of November, 1863, there was not an organized force of confederates near Red Fork, in Desha County; that Washington is in the southwestern portion of the State.

He is satisfied there was not a confederate military "post" or organized confederate force nearer than 150 or 200 miles from Red Fork; that the federals had a large post & navy yard at mouth of White River, which is about 15 or 20 miles from Red Fork; a large garrison at Pine Bluff & Little Rock, and perhaps at other places south of the Arkansas River—I speak of the months of October & November, 1863—that in fact in the months of October & November, 1863, there were very few, if any, straggling soldiers in the portion of Arkansas in which Red Fork is situated. The citizens generally took the oath of allegiance to the U. S., and many, if not most of them, procured what were called
35 protection papers from the U. S. In January & February, 1864, some confederate troops, in small bands, began to return to this section, but generally were merely passing through the country, and keeping out of the way of the federal forces. On the 27th of September I left my residence near Red Fork, and went to Texas, and returned early in November. In all my travels I neither saw nor heard of any confederate troops east of the Ouichita River. The confederates, when they ceased retreating, afterwards extended their military lines to the Ouichita River.

JOSEPH BRANCH.

It is agreed that above statement may be read as the deposition of Jos. Branch in case of Maples vs. Bridge & Co., in U. S. circuit court.

KORTRECHT & CRAFT, *Atto., &c.*

Plaintiff then introduced, as a witness in the cause, E. M. Apperson, who testified as follows:

I know something of the firm of H. E. Bridge & Co., as merchants in St. Louis, Missouri. I know William Butler, Albert Pearce, and W. T. Hecox; knew them in Memphis in 1864. They had an office in my store. I have always understood that Butler, Pearce, & Hecox were members of the firm of H. E. Bridge & Co. I have seen H. E.
36 Bridge in Memphis, but had no particular acquaintance with him. I knew Daniel Shepherd in his lifetime, and knew his handwriting & signature. The signature "Daniel Shepherd" to the paper now shown me is the genuine signature of said Shepherd.

The paper shown the witness, and as to which he thus testified, was the agreement or power of attorney heretofore offered in evidence, signed "H. E. Bridge & Co., by W. Butler; Daniel Shepherd." Another paper was then shown to the witness bearing the signature "Daniel Shepherd," and the witness testified that the signature thereto is the genuine signature of said Shepherd. Plaintiff then offered and read in evidence the said paper to the jury thus proved, in the words & figures following, to wit:

"FEBRUARY *the* 13*th*, 1864.

"Due Joseph Maples or order the sum of eleven thousand and $\frac{4}{100}$ dollars for value received.

"DANIEL SHEPHERD."

Plaintiff then introduced and read in evidence to the jury the deposition of Josiah Maples, in the words & figures following, to wit:

To David H. C. Moore, of Desha County, Arkansas:

You are hereby empowed to take the depositions of Joseph Branch, James Branch, Josiah Maples, Dr. Madden, William Madden, Mrs.

Stone, A. S. Burrows, and others, witnesses in a certain cause
37 pending in the circuit court of the United States for the district of West Tennessee, wherein Josiah Maples is plaintiff, and William Butler & W. T. Hickock are defendants; the same to be read in behalf the plaintiff upon the trial of said cause, & said deposition when taken return under seal to the clerk of said court at Memphis, Tennessee.

In witness whereof, I have hereto set my hand & the seal of said court, at office in Memphis, this 14th day of February, 1866.

[SEAL OF THE COURT.] A. S. MITCHELL, *Clerk*,
ISAAC MORRISON, *D. C.*

Depositions of witnesses, taken and subscribed before David H. C. Moore, on the 26th day of February, 1866, between the hours of 9 o'clock a. m., and 5 o'clock p. m., of said day, at Red Fork, in the county of Desha, and State of Arkansas, in pursuance of a commission hereto annexed, and to be read as evidence in a certain cause now pending in the circut court of the United States for the district of West Tennessee, sitting at Memphis, wherein Josiah Maples is plaintiff and William Butler & A. T. Heckock, of the firm of H. E. Bridge & Co., are defendants, on the part of said plaintiff.

Josiah Maples, a witness known to me to be of lawful age,
38 being to me at the time & place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

To the first interrogatory witness answers that he is not acquainted with either of the parties, unless it be Mr. W. T. Hiclock, whom he met once on the steamboat "Progress," in February, 1864. He does not know who composed the firm of H. E. Bridge & Co. Mr. Daniel Shepperd represented himself, in November, 1863, to be their agent for buying cotton in this section of country. He resided in this county, about five miles from where I live, at the time he thus acted as agent. I do not know whether they were cognizant of his acting as agent, but presume they were. I do not know what agency or connection Shepperd had with the owners, employees, or officers of the steamboat "Progress," but knew the fact they seemed to act in concert. Mr. Shepperd exhibited no power of attorney from H. E. Bridge & Co., but represented himself and acted as such. The original power of attorney or authority to act for Bridge & Co. was in his possession during his lifetime, witness supposes.

To second interrogatory witness answers that he sold Mr. Shepperd one hundred and forty-four (144) bales of cotton, at 40 c. per pound,
39 in the month of November, 1863. The said cotton was to be at the risk of said Shepperd from the day of sale, which was about the 20th November, 1863. He bought the cotton as it lay, and was to pay the cost for it as soon as it could be weighed. The one hundred and forty-four (144) bales weighed 63,340 lbs., as will appear by list of weights hereto annexed and marked "A." The contract of sale was not reduced to writing, as the cotton was delivered at sale. Thirty bales were hauled to his house immediately, but burned, so I learned, by guerrillas, or jayhawkers, or soldiers; this witness does not know which, nor does not know it was burned at all, as he only heard so, but knows that many bales were carried to his house, as he went with it. This prevented Mr. Shepperd from hauling any more, he hoping to keep it

concealed, as he said, from all those who might be disposed to burn or destroy it. In January, 1864, sixty bales more were burned by Crawford's regiment, under the shed in the place of concealment in the cane, about five miles back from the Arkansas River; and in February, 1864, the balance of fifty-four (54) bales was hauled to Red Fork and put on board of the steamboat "Progress." I hauled it to Red Fork at the request of Mr. Shepperd, who was on the said steamboat and received it.

To third interrogatory witness answers that he has answered
40 fully in his answer to 2d interrogatory. Mr. Hickock was on board of the steamboat "Progress," and present when the fifty-four (54) bales were put on board.

To fourth interrogatory witness answers that the reason and particulars are set forth in his answer to 2d interrogatory. This witness has nothing to do with the delivery of the cotton, except what he did at the request of Mr. Shepperd, who was to pay him for it, such as hauling, &c.

To fifth interrogatory he answers that about fourteen thousand dollars were paid him in Memphis by Bridge & Co., and by Mr. Shepperd at his residenee here.

To sixth interrogatory witness answers that there were about eleven thousand dollars on account of burnt cotton unpaid. This amount Mr. Hickock, when he took the fifty-four (54) bales in February, 1864, on the steamboat "Progress," at Red Fork, refused to pay, alleging that Mr. Shepperd was not their agent to buy the cotton. He repudiated Mr. Shepperd's contract and agency. He insisted upon making a new contract or purchase of my cotton at 50c. per pound.

To seventh interrogatory witness answers that when the steamer "Progress" came to Red Fork for the 54 bales, I called upon Mr. Hickock for payment for the 144 bales of cottton. He refused to
41 recognise any purchase made by Mr. Shepperd, saying he would not pay for the cotton which had been burned. Feeling that I was entirely in the power of Bridge & Co., and Mr. Hickock having positively denied any liability for Mr. Shepperd's acts, and also his agency to purchase cotton for them, I finally acquiesced, and took 50 c. per pound for the 54 bales not burned. This arrangement was agreed to by me solely on the representations of Mr. Hickock above stated. Mr. Shepperd having afterwards told me that he was their agent to purchase the cotton, notwithstanding Mr. Hickock's assertions to the contrary, and that I had been treated badly, and, if I would bring suit against them, he would show his agency, and authority as such agent, I determined then to make Bridge & Co. pay for the cotton burned.

To eighth interrogatory witness answers that he has stated what representations were made by Mr. Hickock to induce a settlement in his answer to preceding question. After the payment of the sixteen thousand ($16,000^{00}$) dollars, I took a note from Mr. Shepperd for the balance, about eleven thousand ($11,000^{00}$) dollars.

To the ninth interrogatory witness answers that he knows nothing further. He is forty-eight years of age.

JOSIAH MAPLES.

Subscribed & sworn to before me this 26 day of February, A. D. 1866.

DAVID H. C. MOORE, *Com'r.*

42 *Exhibit, marked A, annexed to answer to 2nd interrogatory of Josiah Maples.*

400	400	380	368	424	510	410
434	380	482	390	470	450	38
454	434	464	406	436	410	480
414	460	408	392	420	490	450
410	510	450	552	422	540	396
446	540	450	430	436	550	510
390	484	382	498	440	406	480
478	478	458	440	420	404	360
474	408	364	520	440	520	380
358	408	368	432	406	500	520
404	532	402	422	398	524	402
480	460	470	420	396	440	468
438	480	378	502	398	460	416
484	390	390	510	434	464	370
392	428	480	430	490	480	310
390	448	480	416	420	432	418
370	318	406	456	430	514	400
402	498	476	420	436	442	440
494	406	396	418	380	470	520
338	398	490	490	530	440	490
	418	506	414			430
8450	9478	8988	9328	8506	9356	9224

Weights of 144 bales of cotton, 63,340
40

$25,336 00

43 Answers of Josiah Maples to cross-interrogatories propounded by defendant:

To x-interrogatory 1st witness answers that his answer to first interrogatory is from personal knowledge.

To x-int'y 2d witness answers from personal knowledge.

To x-int'y 3d witness answers that his answers were from personal knowledge.

To x-int'y 4th witness answers the conversation occurred on steamboat "Progress," but in whose presence, if any one, he does not recollect.

To 5th x-int'ry witness answers he supposes he can claim citizenship in either Tennessee or Arkansas. He has exercised citizenship in Tennessee, and that his family and a portion of his property are in Tennessee; but for the last 16 or 18 months witness has been on his plantation in this State, and where he spends a portion of his time in the management of his plantation business; but still claims Tennessee as his place of residence.

To the 6th x-int'ry witness states that he has fully answered in his answer to direct interrogatories.

To 7th x-int'ry witness says he exhibited to him no written authority or power of attorney.

44 JOSIAH MAPLES.

Sworn to and subscribed before me this 26th day of February, A. D. 1866.

DAVID H. C. MOORE, *Com'r.*

Plaintiff then introduced & read in evidence to the jury the deposition of William Madding, in the words and figures following, to wit:

And at the same time & place before me also appeared William Madding, a witness known to me to be of lawful age, being to me at the time & place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

To the first interrogatory witness answers that he knows the plaintiff, but none of the house of H. E. Bridge & Co. He knows Daniel Shepperd, who lived in this county at the time of his death. Mr. Shepperd represented himself as the agent of H. E. Bridge & Co. to buy cotton. Mr. Shepperd's residence was about five miles from Mr. Maples.

To the second interrogatory witness answers that in November, 1863, Mr. Sheppard came to my house and told me he had bought (144) one hundred & forty-four bales of cotton from Mr. Josiah Maples, and
45 employed me to go and weigh it, &c., and see that it was in good condition. I accordingly went and weighed the cotton, and furnished him, Mr. Shepperd, with a list of the weights. The cotton was in good condition at the time refered to. I also furnished Mr. Maples with a list of its weight. There were 144 bales weighed, the aggregate weight being 63,340 pounds. The exhibit marked "A," annexed to Mr. Maples' answer to 2d interrogatory, is a correct list of the weights. Mr. Shepperd told me he had agreed to pay 40c. per pound for it.

To third interrogatory witness answers that he knows that Mr. Shepperd hauled 30 bales to his house, which was reported to have been burned at his gin-house a few days after it was hauled. Also, he knows that fifty-four (54) bales were put on boardthe "steamboat" Progress at Red Fork in January or February, 1864. The steamboat "Progress" was escorted to Red Fork, by a gunboat; I think it was No. 35. I have heard that the balance of the cotton was burned by Crawford's regiment when it made its raid in this section of country in January, 1864.

To fourth interrogatory he answers he does not know, but heard about the time and since that it had been burned.

To 5th, 6th, 7th, & 8th interrogatories witness says he knows nothing.

To 9th interrogatory witness says he knows nothing further,
46 except I know that Mr. Shepperd received the cotton after I had weighed it, and told me it was at his risk, and if it was burned it would be his loss.

WM. MADDING.

Sworn to & subscribed before this 26th day of February, 1866.

DAVID H. C. MOORE,
Commissioner.

Answers of William Madding to cross-interrogatories propounded by defendant:

To x-interrogatories 1st, 2nd, 3rd, & 4th witness answers from personal knowledge, except when he has stated that his information was from hearsay.

To x-interrogatory 5th witness says he always understood in Tennessee, at or near Memphis.

To x-interrogatory 6th witness answers that he has not.

To x-interrogatory 7th witness answers that Mr. Shepperd exhibited no written authority to act as agent of Bridge & Co. in buying cotton. He however represented himself as such, and as acting for their benefit.

WM. MADDING.

Sworn to & subscribed before me this 26th day of Februrary, 1866.

D. H. C. MOORE, *Com'r.*

47 Plaintiff then introduced and read in evidence to the jury the deposition of Mrs. Sarah L. Stone, in the words & figures following, to wit:

And at the same time and place before me also appeared Sarah L. Stone, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in suit aforesaid, did then and there, on her oath aforesaid, depose as follows, to wit:

To the first interrogatory witness answers that she knows the plaintiff, but none of the house of H. E. Bridge & Co.; she knows Daniel Shepperd; he lived in this county at the time of his death. He always represented himself to me as an agent for the house of H. E. Bridge & Co., then, as he said, living and doing business in the city of Memphis, in the State of Tennessee, and that he, Mr. Shepperd was their agent to buy cotton in this county, (Desha.) Mr. Shepperd's residence was between 5 & 7 miles from Mr. Josiah Maples.

To second interrogatory witness answers that in November, 1863, Mr. Shepperd came to where I was living, and told me he had bought some cotton from Col. Josiah Maples, the plaintiff in this action, but I do not positively recollect how much he said it was; that is, how many
48 bales; but I heard him say repeatedly that he had purchased cotton from Col. Maples. Mr. Shepperd lived in the house with me; he boarded with me something like two years. As I have said, I do not recollect the number of bales he said he had bought of Josiah Maples, but he told me he was to pay 40c. per pound for it.

To third interrogatory witness answers that she knows that Mr. Shepperd hauled 30 bales of cotton to where he was living, which he said was cotton he had bought of Mr. Josiah Maples. The cotton was put under the gin-house, to protect it from the inclemencies of the elements, until he could ship it to Memphis, to H. E. Bridge & Co., as he said. I have repeatedly heard Mr. Shepperd say that the cotton which he had purchased from Mr. Josiah Maples was at his risk, and if it was burned or in any way destroyed, it would be his loss. And after it had been burned, Mr. Shepperd said repeatedly it was his loss, and not Mr. Maples', as he had bought it all at his own risk.

Before Mr. Shepperd's death, a Mr. Martin came to my house, and asked me if I knew from whom Mr. Shepperd had bought cotton. He said he was from Memphis, and had come for the purpose of ascertaining how much cotton Mr. Shepperd had bought, and the standing of the citizens from whom he had made purchases. He procured a horse, and rode over the neighborhood, as he said, hunting for the cot-
49 ton Mr. Shepperd had bought. He manifested considerable interest about it, which led me to believe, from his conduct, questions,

and action in and about the matter, that he was an agent for the same party that Mr. Shepperd said he was.

To 4th, 5th, 6th, 7th, & 8th interrogatories witness says she knows nothing.

To ninth interrogatory witness answers she knows nothing more. She is forty years old, and resides in Desha County, in the State of Arkansas.

SARAH L. STONE.

Sworn to & subscribed before me this 26th day of February, 1866.
DAVID H. C. MOORE,
Commissioner.

Answer of Sarah L. Stone to cross-interrogatories propounded by defendant:

To x-interrogatories 1st, 2d, 3d, & 4th witness answers from personal knowledge, except where she has stated that her information was from hearsay.

To 5th x-interrogatory witness answers she has always understood that Mr. Josiah Maples, the plaintiff in this cause, resided in Tennessee, not far from Memphis, but spends a great deal of his time on his plantation in this county.

To 6th x-interrogatory witness answers that she sold cotton to Mr. Shepperd in 1865; I sold him 650 pounds of ginned cotton; he
50 gave me 50c. per pound. I sold it to him at my house in Desha County, Arkansas. I delivered the cotton to him, and he carried it down to the bank of the Arkansas River in the evening, and about 2 o'clock a. m. next morning a boat came up the river and got it. He never paid me for it. He died very soon after he received it; and as the cotton was gone, I could not or did not get pay for it. There was no particular arrangement made about its destruction or loss with me.

To x-interrogatory 7th witness answers that Mr. Shepperd exhibited no written authority to act as agent of Bridge & Co. in buying cotton. He however represented himself as such, and as acting for their benefit.

SARAH L. STONE.

Sworn to & subscribed before me this 26th day of February, 1866.
DAVID H. C. MOORE,
Commissioner.

Plaintiff then introduced and read in evidence to the jury the deposition of Mrs. Sallie A. Johnson, in the words and figures following, to wit:

51 To the first interrogatory she answers: "I have a distinct recollection of Daniel Shephard; I knew him in 1863, and to the time of his death in 1866; in 1863 Daniel Shephard lived on the Arkansas River," in Desha County, Ark's.

To the second interrogatory she answers: "I know that Daniel Shephard purchased cotton about the latter part of the year 1863; he did then represent that he was purchasing cotton as agent, but I did not know for whom."

To the third interrogatory she answers: "I saw the steamer called the 'Progress' about the first of February, A. D. 1864; said steamer came up the Arkansas River about five or six miles above Shephard's house, and he did ship cotton on board of said steamer 'Progress;' but I do not

know to whom or to what point, except that the cotton was taken down the Arkansas River on said steamer."

To the fourth interrogatory she answers: "I lived in 1863 and 1864 at my place on the north bank of the Arkansas River, nearly opposite the village of Red Ford, to which point said steamer came up in Feb'y, A. D. 1864, as above stated. In November, 1863, I sold to the said Daniel Shephard fourteen bales of cotton, and about the first of
52 February, 1864, he came up the Arkansas River, as above stated, to get the said cotton; and the said fourteen bales of cotton that I had previously sold to said Shephard were then shipped by him on said steamer 'Progress,' from my said place on the Arkansas River, but to whom I do not know. (At the time said fourteen bales of cotton was shipped by said Shephard, he made out an account in my name, and left it with my agent, against H. E. Bridges & Co., at Memphis, Tenn., for the said 14 bales of cotton, and was to send me some goods in payment for the same, a small portion of which were then delivered to me. I was to receive from said Shephard, or from his pricipal in the transaction, 45 cents per pound for said cotton.")

Ruled out.

To the fifth interrogatory she answers: "The commander of the steamer Progress was called Capt. Young. (I do not know that there was a federal officer on board; Mr. Shephard told me there was a government aid on board, but I know nothing about it.')

Ruled out.

53 To the sixth interrogatory she answers: "At the time said steamer 'Progress' came up the Arkansas River, as above stated, she was accompanied by the gunboat 'Marmora' 37, in command of an United States officer, who was called Comodore Rogers; and after receiving the cotton on board of the 'Progress,' both boats steamed down the river; and further deponent saith not."

To the 1st cross-interrogatory she answers: "I never knew Daniel Shephard until I sold him my cotton in 1863; at that time he was introduced to me; and I met him several times from that time until his death in 1864; and was also at his house two or three times."

To the 2nd cross-interrogatory she answers: "I have, in my examination above, stated how I know that Shephard purchased said cotton in the latter part of 1863, and the representations of Shephard were made to me in relation to his agency."

To the 3rd cross-interrogatory she answers: "I personally saw what is stated by me in relation or answer to the 3 interrogatory."

To the 4th cross-interrogatory she answers: "All my state-
54 ments made and answers to direct interrogatory No. 4, 5, & 6 are made upon my own personal knowledge, except as otherwise therein stated; and my means and source of information are distinctly stated; and I do not now remember any other fact that I know or have learned in relation to this subject."

S. A. JOHNSON.

Plaintiff then introduced and read in evidence to the jury the deposition of Albert Madding, in the words & figures following, to wit:

55 The said witness, Albert Madding, aged thirty-four years, being duly sworn, deposed as follows, to wit:

To the 1st interrogatory he answers: "I did not know Daniel Shephard in 1863; he lived on the Burrow place, on Ark. River, in Desha County, Ark's."

To the 2nd interrogatory he answers: "I did not know Shephard until February, 1864, and nothing of the transactions mentioned in this interrogatory."

To the 3rd interrogatory he answers: I saw the steamer Progress in the Arkansas River in February, A. D. 1864, at which time said Shephard did ship cotton on board of said steamer; but I do not know to what point or to whom he shipped it.

To the 4th interrogatory he answers: I came from Texas to Arkansas in February, 1864, and immediately moved on the Burrow place, on which Shephard lived, and know a great deal of Shephard's transactions after that time. I do not know personally of Shephard's cotton purchases; but I know that during the year 1864 he shipped a considerable amount of cotton. In the month of February, 1864, cotton was
56 shipped by said Shephard from Red Fork, from Fletcher's landing, and from the Burrow place, all on the Arkansas River; but I do not know to whom or what No. of bales. I put 11 bales of cotton on the steamer "Progress" for said Shephard at the "Burrow place," and I saw a considerable amount on board. About that time Shephard told me that he had previously bought a large amount of cotton for H. E. Bridges & Co., and was then shipping the same to them; and I know that a considerable amount was then shipped on said steamer "Progress;" some of it from higher up the river.

To the 5th interrogatory he answers: I do not know who was in command of the steamer Progress, or whether there was a federal officer on board of her, except that there was a government aid on the boat. I also, at that time, saw a Mr. Hickerke on the boat, who seemed to exercise considerable authority in regard to the cotton.

To the 6th interrogatory he answers: The steamer Progress, in her trips in the Arkansas River, was always accompanied by a gun-
57 boat, which was commanded by an old-looking man they called Capt. Rogers, and he was dressed as a United States officer; and further deponent saith not.

To the 1st cross-interrogatory he answers: "I knew Daniel Shephard at his home in Desha County, Arkansas, from February, 1864, until his death."

To the 2nd cross-interrogatory he answers: "I know nothing of the matters mentioned in this interrogatory, except as stated in answer to one of the above direct interrogatories, what Shephard told me."

To the 3 cross-interrogatory he answers: My answer to the above direct interrogatory No. 3 is from my own personal knowledge. I saw the said boat, as above stated; was on it, and shipped cotton.

To the 4th cross-interrogatory he answers: I saw the steamer Progress in the Ark's River, accompanied by the gunboat; with the parties on the two boats, as above stated. I was living at Shepherd's house—that is, the Burrow place, and frequently saw Shephard shipping cotton
58 on this steamer Progress; and I have stated the facts as I know them, except that all I knew of the purchase of the cotton and for whom, and to whom shipped, was told me by said Shepherd at the time.

A. MADDING.

The foregoing depositions were taken before me, Alexander Harding, as stated caption, in pursuance to the foregoing commission and interrogatories, and reduced to writing by me; and I do hereby certify that

I am not interested in the said cause, nor of kin or counsel to either of the parties.

Given under my hand this 18th day of January, 1867.

ALEXANDER HARDING.

59 Plaintiff then introduced himself as a witness before the jury, and testified as follows:

When I saw Mr. Hicox, as I have stated in my deposition, on the steamer 'Progress,' he denied that Daniel Shepherd was the agent of H. E. Bridges & Co. to buy cotton at all; and denied that he had any authority to make the contract with me for my cotton, which I claim that he had made, as stated in my deposition. It was because of these representations, made to me by Mr. Hicox, and for no other reason, that I sold him the 54 bales of cotton at 50 cents p'r pound. My wife went to Memphis on the 'Progress,' and received the money for the 54 bales of cotton. I received in all about $3,000 from Mr. Shephard, paid to me in Desha County, when I sold him the cotton, and $13,000 paid to my wife in Memphis, making $16,000. After Hicox had made these representations, and I had sold him the 54 bales of cotton, I came 8 miles down the river on the steamboat 'Progress.' Mr. Shephard was on board, and I told him I wanted to have a settlement with him; and we did settle, and he gave me his note for $11,000, as the balance
60 that would be due me. This note is the one already introduced in evidence. The signature thereto is the genuine signature of Daniel Shepherd. Sometime after the giving of this note, perhaps a month afterwards, Daniel Shepherd told me that Hicox had treated me badly; that he (Shepherd) was the agent of Bridges & Co. to buy cotton, and was authorized to make the contract he had made with me; and that if I would sue Bridges & Co., he would furnish the proof that would enable me to recover. Shepherd did not speak of any written authority, and never did tell me that he had written authority, and never did show me any written authority. Shepherd was killed some time during the year 1864, and after his death I got permission to look into his papers, and among his papers I found the agreement or power of attorney between H. E. Bridges & Co. and David Shepherd which has been introduced as evidence in this cause.

The foregoing was all the evidence introduced by plaintiff, and he here rested his cause.

61 Defendants then introduced and read in evidence to the jury the depositions of M. E. Martin, in the words and figures following, to wit:

The said Missionary E. Martin, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says:

Int. 1st by defendant. Are you one of the defendants William Butler and W. T. Hecox; if not, are you acquainted with the parties, and how long have you known them?

In answer to int. 1st by defendant, witness says: I am not one of the defendants. I am acquainted with the parties, and have known them for a period of near four years.

Int. 2nd by defendant. Were you acquainted with Daniel Shephard in his lifetime? and, if yea, when and where? How long did you know him?

In answer to int. 2nd by defendant, witness says: I was acquainted with Daniel Shepherd in his lifetime. I knew him in the winter of

62 eighteen hundred and sixty-three and four; I
him repeatedly for six months.

Int. 3rd by defendants. Did you know anything of the age
Shepherd for the firm of H. E. Bridge & Co. in the purcha
or of the connection of said Shepherd with said firm? If y
that you know; state fully when the agency of said Shephe
firm began; state what authority or instructions he had, if
state fully what they were, giving particulars and details as to ...nd
of business he was to transact, the region of country in which he was to operate, what he was to do, and how he was to do it. If you shall state that said Shephard was to buy cotton or contract for cotton for H. E. Bridge & Co., state fully all that you know as to his authority and instructions, as to the manner of buying or contracting, the prices to be paid, the mode of payment, the place and manner and time of delivery, and the whole extent of his authority, and the instructions by which he was to be governed. Then state fully the source of your information,
and the means you have of knowing what you state.

63 In answer to interr'og. 3rd by defendant, witness says: "All I know as to the agency of Daniel Shepherd for the firm of H. E. Bridge & Co., in the purchase of cotton, or of the connection of said Shepherd with said firm, is as follows: Some time in November, 1863, Shepherd was furnished with money by H. E. Bridge & Co. for the purchase of cotton; the instructions given by the said firm to said Shepherd, in relation to the maker, were given through me. I was sent down by said firm to Arkansas with money and instructions for said Daniel Shepherd; the instructions were that Shepherd should purchase cotton for said firm of H. E. Bridge & Co. but he (Shepherd) was not to agree to pay more than thirty to thirty-five cents per pound for it. He was to be at liberty to make small advances of money on account, but such advances were in no case to exceed twenty-five dollars p'r bale, and the balance of the purchase-money was not to be paid or payable until such time as the firm of H. E. Bridge & Co. should be able to send a boat up
the Arkansas River for the cotton, and it was in their possession,
64 and weighed and placed on the boat. Shepherd was to take no risk for the firm of the destruction of the cotton by incendiaries, guerillas, or in any other way whatever, except to the extent of the amount advanced, and that advance, as above stated, was not to exceed twenty-five dollars per bale when the cotton was in the possession of H. E. Bridge & Co., and on their boat. Then, and not until then, Mr. Shepherd was to pay the price per pound agreed upon with the parties, in greenbacks or plantation supplies. The source of my information as to the terms of such instructions are, that such instructions were given by said firm to said Shepherd through me.

Interrogatory fourth by defendant. State fully all that you may know, and your means of knowing it, in regard to the authority or instructions given to said Shepherd by H. E. Bridge & Co., in reference to taking risks of the loss or destruction of any cotton he might contract for, and as to the time and place where the cotton contracted for was to be delivered, and to the risk of its loss or destruction, and the
terms of payment of the same to be fixed and agreed upon; state
65 particularly all that you know as to the authority and instructions given to said Daniel Shepherd by H. E. Bridge & Co. upon these points, giving dates as nearly as you can, and stating how you received your knowledge.

In ans. to inter,og'y 4 by defendant, witness says: "I was instructed positively by H. E. Bridge & Co. to instruct Shepherd, and I did so in-

I am not interested in the said cause, nor of kin or counsel to either of the parties.

Given under my hand this 18th day of January, 1867.

ALEXANDER HARDING.

59 Plaintiff then introduced himself as a witness before the jury, and testified as follows:

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60 that would be due me. This note is the one already introduced in evidence. The signature thereto is the genuine signature of Daniel Shepherd. Sometime after the giving of this note, perhaps a month afterwards, Daniel Shepherd told me that Hicox had treated me badly; that he (Shepherd) was the agent of Bridges & Co. to buy cotton, and was authorized to make the contract he had made with me; and that if I would sue Bridges & Co., he would furnish the proof that would enable me to recover. Shepherd did not speak of any written authority, and never did tell me that he had written authority, and never did show me any written authority. Shepherd was killed some time during the year 1864, and after his death I got permission to look into his papers, and among his papers I found the agreement or power of attorney between H. E. Bridges & Co. and David Shepherd which has been introduced as evidence in this cause.

The foregoing was all the evidence introduced by plaintiff, and he here rested his cause.

61 Defendants then introduced and read in evidence to the jury the depositions of M. E. Martin, in the words and figures following, to wit:

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In answer to int. 2nd by defendant, witness says: I was acquainted with Daniel Shepherd in his lifetime. I knew him in the winter of

62 eighteen hundred and sixty-three and four; I knew and saw him repeatedly for six months.

Int. 3rd by defendants. Did you know anything of the agency of Daniel Shepherd for the firm of H. E. Bridge & Co. in the purchase of cotton, or of the connection of said Shepherd with said firm? If yea, state all that you know; state fully when the agency of said Shepherd for said firm began; state what authority or instructions he had, if you can; state fully what they were, giving particulars and details as to the kind of business he was to transact, the region of country in which he was to operate, what he was to do, and how he was to do it. If you shall state that said Shephard was to buy cotton or contract for cotton for H. E. Bridge & Co., state fully all that you know as to his authority and instructions, as to the manner of buying or contracting, the prices to be paid, the mode of payment, the place and manner and time of delivery, and the whole extent of his authority, and the instructions by which he was to be governed. Then state fully the source of your information, and the means you have of knowing what you state.

63 In answer to interr'og. 3rd by defendant, witness says: "All I know as to the agency of Daniel Shepherd for the firm of H. E. Bridge & Co., in the purchase of cotton, or of the connection of said Shepherd with said firm, is as follows: Some time in November, 1863, Shepherd was furnished with money by H. E. Bridge & Co. for the purchase of cotton; the instructions given by the said firm to said Shepherd, in relation to the maker, were given through me. I was sent down by said firm to Arkansas with money and instructions for said Daniel Shepherd; the instructions were that Shepherd should purchase cotton for said firm of H. E. Bridge & Co. but he (Shepherd) was not to agree to pay more than thirty to thirty-five cents per pound for it. He was to be at liberty to make small advances of money on account, but such advances were in no case to exceed twenty-five dollars p'r bale, and the balance of the purchase-money was not to be paid or payable until such time as the firm of H. E. Bridge & Co. should be able to send a boat up the Arkansas River for the cotton, and it was in their possession,

64 and weighed and placed on the boat. Shepherd was to take no risk for the firm of the destruction of the cotton by incendiaries, guerillas, or in any other way whatever, except to the extent of the amount advanced, and that advance, as above stated, was not to exceed twenty-five dollars per bale when the cotton was in the possession of H. E. Bridge & Co., and on their boat. Then, and not until then, Mr. Shepherd was to pay the price per pound agreed upon with the parties, in greenbacks or plantation supplies. The source of my information as to the terms of such instructions are, that such instructions were given by said firm to said Shepherd through me.

Interrogatory fourth by defendant. State fully all that you may know, and your means of knowing it, in regard to the authority or instructions given to said Shepherd by H. E. Bridge & Co., in reference to taking risks of the loss or destruction of any cotton he might contract for, and as to the time and place where the cotton contracted for was to be delivered, and to the risk of its loss or destruction, and the terms of payment of the same to be fixed and agreed upon; state

65 particularly all that you know as to the authority and instructions given to said Daniel Shepherd by H. E. Bridge & Co. upon these points, giving dates as nearly as you can, and stating how you received your knowledge.

In ans. to inter,og'y 4 by defendant, witness says: "I was instructed positively by H. E. Bridge & Co. to instruct Shepherd, and I did so in-

struct him, to make no contracts with any parties for cotton where he had to take the risk of its destruction in any manner before its delivery on board of a steamboat sent by H. E. Bridge & Co. for it, except to the amount of ten to twenty-five dollars per bale; that he might, if necessary, advance. H. E. Bridge & Co. were to send a boat up for the cotton as soon as they could get the necessary authority from the United States government, or their agents, to take a boat into the Arkansas River.

Inter'y 5 by defendant. State all that you may know of the dealings and H. E. Bridges & Co. in reference to cotton, giving particulars
66 of amount purchased, if any, the price agreed upon, the amount paid, the additional amount claimed [claimed] by him, if any, and not paid, and all agreements and understandings between plaintiff and said Daniel Shepherd in regard thereto; state all that you know about plaintiff's claim sued for.

Excepted to. Excepted to.

In answer to inter'og'y 5th by defendant, witness says: (Mr. Shepherd informed, me while I was at his place on the Arkansas River, that he had purchased of Josiah Maples all of his cotton; that inasmuch as it was a round lot he had agreed to give him forty cents p'r pound for it, and had made him some advances, and that the balance was to be paid upon delivery upon H. E. Bridge & Co.'s steamboat, and not before; that he had not agreed to take any risk of its destruction before it was delivered in the way above named. I told Mr. Shepherd I thought he had disobeyed his instructions in agreeing to pay over thirty-five cents p'r pound, and I hesitated for some time about giving him the money that was sent down by me from H. E. Bridge & Co., fearing that he might again and in
67 other was disobey the instructions of the firm; but upon his positive promise that he would thereafter obey them to the letter, as I had given them,) I gave him the money—some ten thousand dollars. I remained with Mr. Shepherd about ten days at his place; he told me of the purchase of several small lots of cotton, all of which he said were purchased at from twenty-five to thirty-five cents per pound; he said he was negotiating for two considerable lots of cotton owned by Mess. Jos. & James Branch.

Int'y 6th by defendant. If you were on any steamboat belonging to H. E. Bridge & Co., or used by them in any business in which they were engaged, state what boat, and when, and where it was; state in what capacity you were on said boat, and what, if anything, you had to do with the business. If, while thus acting on said boat, you had any business transations or negotiations about business with plaintiff or any agent for plaintiff, state fully when and where it was, and all that passed. Give particulars and details. State who was present during such
68 negotiations. Was Daniel Shepherd present? If at any time, on the boat or elsewhere, any settlement was made or agreed to by plaintiff of matters growing out of said Shepherd's transactions, or if claims made by plaintiff against Bridge & Co., state time and place, and all the particulars.

In answer to int'y 6th by defendant witness says: I have been on different boats belonging to H. E. Bridge & Co.; on the steamer Hastings, the steamer Treestone, the steamer Progress, and the steamer Emma. I was acting as agent for H. E. Bridge & Co., purchasing cotton for them in Arkansas and Louisiana. I never at any time had any business transactions or negotiations about business with the plaintiff, or any agent for plaintiff, and I know nothing about any settlement or agreement made by plaintiff of matters growing out of said Shepherd's transactions, or of claims made by plaintiff against H. E. Bridge & Co., or anything in relation thereto.

69 Int'y 7th by defendants. State anything further which you may know of advantage to either party to this suit, or calculated to throw light upon the questions involved in it.

In answer to i'te'ry 7 by defend't, witness says: I have purchased large lots of cotton for H. E. Bridge & Co. in Arkansas and Louisiana, and was always governed by the same instructions given said Shepherd by H. E. Bridge & Co., through me, as above stated, and never thought of paying or agreeing to pay for cotton until I had a boat ready to take it away.

Excepted to { [Some time in the spring of 1864 I saw Mr. Shepherd in Memphis, and learned from him that a part of Mr. Maples' cotton had been burned, and he said it was Maples' loss, and a severe one for him (Maples'.)]

Cross-int. 1. State how many parcels of cotton Shepherd bought for you, the highest prices he paid or agreed to pay for any which was received by or for you or H. E. Bridge & Co. If you can state exactly the number of crops or lots of cotton, or owners from whom he bought, state as near as you can, and whether there books which show

70 the transactions; and if so, why you do not refresh your memory, and ascertain exactly by examining them.

In answer to cross-int'y 1, witness says: I cannot testify as to any of the matters enquired after in such interrogatory; and that if there are such books as suggested, I have not access to them. I know nothing more than what appears in these depositions.

Cross-inter'ry 2, If there was any written power of attorney or instructions to Shepherd as to limit and terms of price, or as to risk of cotton when contracted for by him, produce them.

In ans. to cross-int'y 2, witness says: So far as I know there was no written power of attorney or instructions to Shepherd; his instructions being given to him by me verbally, and such instructions were in the terms hereinbefore stated by me.

M. E. MARTIN.

And defendants offered no further proof, but here rested their cause.

71 The foregoing was all the testimony introduced before the jury by plaintiff and defendants in the trial of this cause.

And thereupon, after argument by counsel for both plaintiff and defendants, the court charge the jury as follows:

72 In circuit court U. S., at Memphis, Oct. 2nd, 1867.

JOSIAH MAPLES
vs.
H. E. BRIDGES & CO.

Charge of court to the jury.

In this case the plaintiff seeks to recover the price of 90 bales of cotton, at 40 cents per pound, alleged to have been sold by him to Daniel Shepperd, as agent for d'fend'ts:

In proof of Shepperd's agency for defendants, or for H. E. Bridges & Co., of which firm defendants were members, a written agreement or power of attorney has been introduced in evidence by plaintiff, purporting to be executed by H. E. Bridges & Co. and Daniel Shepherd. It has

been claimed on behalf of plaintiff, and denied on the part of defendant, that this paper constitutes a partnership between H. E. Bredes & Co. and Daniel Shepherd as to third persons; and that Shepherd's contracts made under it were made by him as partner, and as such were binding on the partnership. My construction of this instrument is, that it does not contemplate that Shepherd should have any ownership in the cotton to be bought by him, or any interest in or control over it, beyond the proportion of the net profits which he was to receive as compensa-
73 tion for his services, and that this interest in the profits was fixed as a measure of his compensation merely. I conclude therefore, and do instruct you, that it did not even as to third persons create a partnership.

It has been claimed for d'f'd'ts that the contract for the purchase of the cotton from pl'ff, if made by Shepherd at all, was made in an insurectionary district, and was illegal under the act of Congress, unless made under a permit granted by the proper authority. This is true. It is moreover true that even if Bridges & Co. had a permit to buy cotton within the limits of military occupation of the national forces operating from the north, a purchase made in Desha County, Arkansas, would have been contrary to law, and the contract illegal and void, unless made in a portion of said county which was at the time within the lines of such military occupation. What is such military occupation is a question of law to be decided by the court; and I instruct you that if you believe the testimony in the case as to the location of federal forces and garrisons in the region of country where the contract was made, and (as to the desire of the inhabitants) submitting to the authority of the government to restore their relations with the government as manifested by their takjng the oath of allegeance, and applying for and receiving "pro-
74 tection papers," then there was such a military occupation as is contemplated by the laws of Congress referred to.

But in addition to this, the special agent of the Treasury Department, who was authorized to grant permits, exercised judicial functions in deciding what country was within the lines of military occupation; and when he granted a permit to buy cotton in a designated region, the permit itself was a decision by him that the region so designated was so occupied. When an officer of the government, thus clothed with judicial functions, grants a permit in the exercise of those functions, it would be very unjust to hold the party receiving the permit and acting under it responsible for that decision. If therefore, in this case, a permit was granted, you are bound to believe that the special agent who granted it did decide, in doing so, that the region of country to which the permit extends was within the lines of military occupation; and I instruct you, as a matter of law, upon the proof in the case as to the condition of the country, and upon the permit granted to Bridges & Co., that Desha County, Arkansas, was, at the date of the contract, in November, 1863, within the lines of military occupation of the national forces operating from the north, and that the pl'ff and Shepherd had the right to
75 make the contract for the sale and purchase of the cotton.

These questions disposed of, the case is resolved into a question of agency. That the contract for the cotton was made between plaintiff and Shepherd, has been fully proved. Now did Shepherd have authority to bind defendants by that contract? If Shepherd had gone only to pl'ff to buy cotton claiming to be the agent of d'f'd'ts to buy his cotton alone, pl'ff should have enquired for his authority; and if he contracted with Shepherd without doing so, would contract at his own risk. If it turned out afterwards upon other proof that Shephard had authority to act for

d'f'd'ts, it would be all right; but if otherwise, d'f'd'ts would not be bound by Shepherd's contract. Under this view, Shephard dealing and claiming authority to deal with plaintiff alone, Shepherd would be a special agent for Bridges & Co. If, however, Shepherd went into Desha county to buy cotton generally, wherever he could get it on satisfactory terms, representing himself to be the agent of Bridges & Co. to make such general purchases, then he would be claiming to be a general agent, and if really sent there to purchase cotton by Bridges & Co. would be their general agent; and a different rule as to the terms and
76 extent of his agency and plaintiff's duty to look to them, would be applicable from that which I have stated in regard to a special agency.

A principal is bound by all that a general agent does within the scope of the business in which he is employed as such general agent; and even if such general agent should violate special or secret instructions given him by his principal, and not disclosed to the party with whom the agent deals, the principal would still be bound if the agent's acts were within the scope of the business in which he was employed, and of his general agency. For illustration: if a general agent to buy cotton agrees to pay 40 cts. p'r pound, when he had been instructed by his principal not to agree to pay more than 30 cents, the principal is nevertheless bound by the contract, unless the party selling the cotton was aware of the limit as to the price fixed by the principal. The reason is, that it is within the scope of the agency to buy the cotton at 40 cents, and the private instructions do not effect those to whom they are not disclosed.

However, a party dealing with a general agent, who seeks to hold the principal bound for the agent's acts or contracts, must show, in order to recover, that the agent held himself out as general agent, and that
77 in fact he was such general agent.

If, therefore, in this case Shepherd held himself out as the general agent of H. E. Bridges & Co., d'f'd'ts are bound by the contract which he made with pl'ff for the cotton, notwithstanding Shepherd may have agreed to pay more for the cotton than his principal had authorized; and if, as general agent for Bridges & Co. to buy cotton in Desha County, Shepherd was not authorized by Bridges & Co. to buy cotton except to be delivered on board the boat, and in violation of their instructions he did buy pl'ff's cotton, and agreed to receive and accept delivery of it elsewhere than on the boat, unless pl'ff knew of these instructions, defendants are bound by the contract which Shepherd made, because it was within the scope of his general agency just as much as was the agreement to give for the cotton a larger price than that to which he was limited by the instructions of Bridges & Co.

As agent for Bridges & Co. to buy cotton, Shepherd could not insure cotton; and if he had bought pl'ff's cotton to be delivered on the boat, but agreed with pl'ff that, until so delivered, it should be at the risk of Bridges & Co., then Bridges & Co. would not be bound to pay for
78 the cotton if burnt or otherwise destroyed. But, as already stated, Shepherd could bind Bridges & Co. by his contract to accept delivery of the cotton where it then was, instead of on the boat, and his acceptance of such delivery would vest the property in the cotton in Bridges & Co., and they would be bound to loose the cotton if it should be afterwards destroyed. Therefore, if Shepherd did buy pl'ff's cotton for Bridges & Co., representing himself as their general agent, and did agree to consider it as delivered, and did accept it as delivered where it then was, Bridges & Co. were bound by this contract, and the cotton became their property as soon as so accepted by Shepherd, and, if sub-

sequently destroyed, must be their loss, in the absence of any knowledge on the part of the pl'ff that Shepherd had violated his instructions.

But it is said that plaintiff agreed to rescind and abandon the contract made with Shepherd, and made a new contract with d'f't Hicock, by which he sold to Hicock the 54 bales of cotton not burned, at 50 cents p'r pound, and that this discharges the former contract made with Shepherd. The effect of the new contract must depend on the circumstances. If plaintiff & Hicock came together, and made a contract about the
79 54 bales, when all the facts were known to pl'ff—that is, if pl'ff knew that Shepherd had exceeded his authority, and then made the new contract as proven, this new contract would discharge d'f'd't from the former contract between pl'ff & Shepherd. But in order that the new contract might have this effect, pl'ff must have known all the facts—all about Shepherd's authority; and if not thus advised—if anything known to Hicock, which pl'ff was entitled to know was not disclosed to pl'ff—pl'ff was not bound by the new contract, and d'f'd'ts were not discharged from the old one. But it is claimed on the part of d'f'd'ts that the taking by pl'ff of Shepherd's note afterwards, in settlement for the burnt cotton, was a discharge of d'f'd'ts. This would depend upon the same circumstances as those referred to as fixing the effect of the new contract for the 54 bales. If pl'ff knew all the facts, and voluntarily agreed to look to Shepherd for the value of the burnt cotton, he would be held to his contract, and would have no further claim on Bridges & Co. Upon this point it is alleged for pl'ff that Hicock denied to him that Shepherd had any agency whatever for Bridges & Co., and that pl'ff
80 believed this, and acted solely upon the representation of Hicock when he took Shepherd's note. If you should believe that he was induced to make the new contract for the 54 bales, and took Shepherd's note upon Hicock's representations as stated, then pl't'ff can repudiate all the he did under the influence of those representations on account of Hicock's fraud; and can go back to the first contract made with Shepherd. But if pl't'ff knew Shepherd's authority before he did these things, he will be bound by them, and d'f'd'ts discharged.

If, after Shepherd told pl't'ff that he could furnish him the proof which would enable him to recover in a suit against Bridges & Co., pl't'ff sold the 54 bales of cotton to Hicock for 50 cents a pound, and took Shepherd's note for the burnt cotton, then pl't'ff is bound by their new contract, and Bridges & Co. discharged. If pl't'ff is to recover at all, the measure of the recovery is the price of the 144 bales, at 40 cents per pound, upon which is to be credited whatever sum has been paid to pl't'ff, including the 54 bales at 50 cts. per pound. The jury may
81 look to the amount for which Shephard gave his note as being the amount due at the time, because it was so agreed by Shepherd, who was agent and familiar with all the facts, or they can make calculations for themselves.

If the contract between pl't'ff and Shepherd was that the cotton should be paid for on delivery, pl't'ff is entitled to interest from the time of the delivery if the jury choose to give it, but they may, in their discretion, allow no interest, or so much interest as they may think just and right.

And thereupon, before the jury retired, the defendants, by their counsel, excepted to the foregoing charge of the court upon the following points and in the following particulars, viz:

That the court erred in charging—

1°. That the written agreement or power of attorney signed "H. E. Bridges & Co., by W. Butler," and "Daniel Shepherd," introduced in

evidence by plaintiff, established that Daniel Shepherd was the general agent of H. E. Bridges & Co.

2°. That in granting the permit proved by Carleton, the
82 treasury officer exercised judicial functions, and decided conclusively that the region of country to which the permit relates was within the lines of military occupation, and that "as a matter of law, upon the proof in the case as to the condition of the country, and upon the permit granted to Bridges & Co. that Desha County, Ark., was, at the date of contract, in Nov., '63, within the lines of military occupation of national forces operating from the north," &c.

That the court erred—

3°. In the instruction given to the jury as to general and special agency, because the same was not applicable to the proof in the case, was irrelevant therefore, and calculated to mislead the jury; and also because, as abstract propositions of law, the instruction upon this point is erroneous.

4°. In that part of the charge which relates to the new contract between Hicocks and plaintiff, by which Hicock bought the 54 bales of cotton at 50 cts. p'r pound, and which states to the jury, the
83 effect of the new contract.

Which objections were disallowed and overruled by the court, to which the defendants by their counsel excepted at the time.

And thereupon, after being thus charged by the court, the jury retired to consider of their verdict, and returned into court a verdict for plaintiff for the sum of $

And thereupon, defendants entered the motion for a new trial in the words and figures following, to wit:

84 In the circuit court of the United States for the district of West Tennessee.

JOSIAH MAPLES
vs.
WILLIAM BUTLER & W. L. HICOX.

W. T. Hicox, one of the above defendants, makes oath that he was present in February, 1864, when Daniel Shepherd executed his note to plaintiff, for about eleven thousnnd dollars in settlement for the balance due on cotton plaintiff had sold Shepherd, which had been burned, and plaintiff had then fully explained to him the authority under which Shepherd acted or claimed to act for H. E. Bridges & Co. in making the purchase of the cotton. The power of attorney or paper purporting to authorize Shepherd to buy cotton, dated in Oct., 1863, and signed "H. E. Bridges & Co., by Wm. Butler," and Daniel Shepherd, was then shown to plaintiff, and he took Shepherd's note in final settlement of the balance he claimed, after said paper was shown to him, and with a full knowledge of all the facts; at the same time, and as a part of the same transaction, plaintiff agreed to and did sell to affiant the balance of the
85 cotton, some fifty or sixty bales not burned, at 50 cents p'r pound instead of the lower price Shepherd had agreed to give for the whole.

Affiant further states that Wm. Butler, who executed the said paper or power of attorney to Shepherd, was not at the time it was given a member of the firm of H. E. Bridge & Co.; he became a member of the firm afterwards in Jan'y, 1864; previous to that he acted as agent of the firm, and was so acting when said paper was given. He had no written or, so (far) as affiant knows, other authority to appoint other agents

under him; & this power of attorney to Shepherd was never approved by the firm or known to them until after the cotton was burned; but the firm had great confidence in Mr. Butler, & affiant believes he thought he had the right to give the paper. Affiant has been taken greatly by surprise by hearing the testimony of plaintiff on the trial was that he did not know Shepherd acted under or had such a power of attorney at the time he took his note for the balance he claimed on the burnt
86 cotton. The statement, if made by him, is positively untrue as above stated. Affiant is now a resident of the State of New York, & did not know his presence at the trial would be necessary—in fact, did not know the trial would take place. Since Shepherd is dead, he knows of no means of contradicting plaintiff's testimony on that point, except by his own testimony; and he prays for a new trial, not for delay, but that justice may be done.

W. T. HECOX.

Subscribed & sworn to before me this 11th day of December, 1867.
[NOTARIAL SEAL.] R. A. BONTA,
Notary Public, Syracuse, N. Y.

87 On the hearing of the said motion for a new trial, defendants introduced and read to the court the affidavit of Wm. Butler, in the words and figures following, to wit:

[On the hearing of the said motion for a new trial, defendants introduced and read to the court the affidavit of Wm. Butler, in the words and figures following, to wit:]

88 In the circuit court of the United States for district of West Tennessee.

JOSIAH MAPLES
vs.
WILLIAM BUTLER & W. T. HECOX.

Wm. Butler, one of the defendants in above cause, makes oath that he was not a partner of the firm of H. E. Bridge & Co., on the 16th of October, 1863, when the power of attorney by them to Daniel Shepherd, which was used in evidence on the trial of this cause, was given, nor in November, 1863, when it is claimed the contract was made on which the suit was based. Affiant is now, and has been for many years, a resident of Sprinfield, Ill's. He was in Memphis during the last half of the year 1863, & for about 3 or 4 months of 1864, and was employed during the fall of 1863, as the agent of H. E. Bridge & Co., at Memphis, at a salary of $1,200 p'r month. The firm then consisted of H. E. Bridge, W. T. Hecox, & Albert Pearce, & James L. Lamb. Affiant was not a partner and had no interest with the firm in any way, except to faithfully perform his duty as their agent and receive his salary. On the 6th of January, 1864, they took him in as partner, and he continued such until they withdrew their office from Memphis in
89 the summer of 1864. Previous to January 6th, 1864, affiant never held himself out or pretended that he was a partner or otherwise interested with the firm, except as their agent. Previous to that date all papers executed by him for the firm, he signed, H. E. Bridge & Co., by W. Butler, and so it will be seen he signed the power of attorney to Daniel Shepherd, used in evidence in this cause. Affiant further states that he left Memphis in April or about first of May, 1864, and went to

Vicksburg, and did not return to Memphis until some time in July, when he arrived late at night, and the next day, about 11 o'clock, left for his home at Springfield, Illinois, and has not been here since until his present visit, which has been made since learning that judgment had gone against him in this cause. He knew nothing whatever of this suit until since the trial at the pres't term, except as follows: when he was in the act of finally leaving Memphis, as above stated, and was in a carriage in company with defendant W. T. Hecox, on their way to take a steamer at the City wharf to go up the river, the carriage was stopped on the street by a stranger, who enquired their names, & then told them he
he had a summons or some process for them, which he showed
90 them. Affiant states positively that no copy of decleration or any other paper was given or offered to him, and if any was given to or served on Hecox, affiant did not see or know it. Hecox, before they left, went to the office of Kortrecht & Craft, to employ them to attend to the case; affiant knew there was some dispute and claims set up against the old firm of H. E. Bridge & Co., on account of Dan'l Shepherd's cotton purchases and transactions in the fall of 1863, and while he knew nothing of Maples or any one else personally of whom Shephard had purchased cotton, he either, by having heard Maples' name, or by what Hecox told him, knew the suit was on account of cotton transactions of Shepherd in the fall of 1863, and before affiant became one of the firm. Hecox told him he had employed Messrs. Kortrecht & Craft to defend the suit, and do whatever was necessary, and as affiant knew he was not liable, & that the suit related to matters which occurred previous to his becoming one of the firm of H. E. Bridge & Co., he went home and paid no further attention to the case, and left the entire management of the case and defense to Hecox and Pearce, two of those who were members of the firm of H. E. Bridge & Co., in the fall of 1863, when
91 the transactions occurred. Hecox then lived in Chicago, and Pearce in St. Louis; I, affiant, at Springfield, Ill's; & he did not know after leaving Memphis, in 1864, that he had any interest in the matter until, since the trial of the cause, he received a dispatch stating the result. While affiant was in Memphis in 1863 & '4, he knew of no courts in Memphis, except military courts, civil commissions, and the like. He did not know the United States court had been opened, and no declaration being served or delivered to him or to Hecox in his presence, he supposed the summons was a notice to appear in the civil commission, or in some similar court or tribunal. He states positively that no copy of declaration was served on or even showed to him, and none on Hecox in his presence or to his knowledge. Affiant is informed that the only testimony on the trial, that he was one of the firm of H. E. Bridge & Co., so as to be chargable in the suit, are the depositions of B. Bowling and G. W. Carleton; that Bowling's deposition was only taken & filed on the 23rd of September, 1867, during the present term of the court, and
two short a time before the trial for affiant to have been notified
92 at his home in Springfield, Illinois, where he was, & have got here to testify to the fact that he was not a partner until Jan'y 6th, 1864. He did not and does not now know of any one by whom the fact could have been proven except those who where & are further away from Memphis than affiant. He is informed that Carleton's testimony would not have been sufficient, as he only proves what his understanding was. Affiant is taken by surprise by the testimony of said Bowling & Carleton; he did not know before the trial, and he is informed by the attorney for the defense that they did not, that Carleton's deposition had been taken or would be offered in evidence. On a new trial he can

positively prove by all the members of the firm of H. E. Bridge & Co., that he was not a member of the firm until Jan'y 6, 1864, and that whatever may be the fact as to the liability for Shepherd's acts of those who were members, that affiant was & is in no way liable. He would have obtained and made this proof before had any notice or intimation that such proof would be nescessary. But living so far away & knowing that Shepperd was not his agent, he left the defence to those who were his principals.

93 Affiant is advised that the manner of signing the power of attorney indicates that he was not a partner, & he certainly would not have signed it as he did, "H. E. Bridges & Co., by W. Butler," if he had been one of the firm.

He prays for a new trial, not for delay, but that justice may be done.

WILLIAM BUTLER.

UNITED STATES OF AMERICA, STATE OF TENNESSEE,
District of West Tennessee, City of Memphis:

Personally appeared before me, Fearn Penn, United States commissioner for the district of West Tennessee, duly appointed under and according to the laws of the United States, with authority to administer oaths, &c., William Butler, to me personally known, who, being by me duly sworn, says that the matters and facts stated in the foregoing affidavit of his own knowledge are true, and those stated upon the information of others he believes to be true, and subscribed the same in my presence.

In testimony whereof, I have hereunto set my hand and official seal this 10th day of October, 1867.

[SEAL.] FEARN PENN,
U. S. Commissioner.

94 And therefore, after argument heard, the court overruled the motion so made, and refused to grant to defendants a new trial in the cause, and to the judgment of the court, overruling the said motion, and refusing to grant them a new trial, defendants except, and tender this, their bill of exceptions, praying that the same may be signed and sealed by the court, and made part of a record in the cause, which is accordingly done.

CONALLY F. FRIGG. [SEAL.]

We agree to the foregoing bill of exceptions.

McRAE & SMITH.
KARTRECHT & CRAFT.

95 UNITED STATES OF AMERICA,
District of West Tennessee:

I, Abram S. Mitchell, clerk of the United States circuit court for this district, do hereby certify that the foregoing is a full and true copy of the record and proceedings in the case of Josiah Maples against William Butler and W. T. Hicox, as determined in said court at September term, 1867, as the same remains of record in my office.

Witness my hand and the seal of said court, at office, this 20th day of March, A. D. 1868.

[SEAL.] A. S. MITCHELL, *Clerk*,
ISAAC MORRISON, *D. C.*

96 *Bill of cost.*

Circuit court U. S.—September term, 1867.

JOSIAH MAPLES *versus* WILLIAM BUTLER AND W. T. HICOX. } Judgment 3d day of October, 1867. For debt, $. For damages, $9336 00. $

Clerk's fees.

Issuing 1 summons and seal, $1 20 each; 1 certificate on do. 15c. each; bond for cost, 30c.; filing do., 10c.; 1 certificate on do.	1 20	
15c.; filing declaration, 10c.; certificate on do., 15c.; 1 copies of do., 1 00;	55	
Rule to plead, 15c.; filing 1 plea, 10; 1 certificate on do., 15;	1 40	
Filing replication, 10c.; certificate on do., 15c.; filing 25 other papers	40	
in cause, 10c. each 2 50; 25 certificates on same, 15c. each, 3 65; issuing 8	25	
spas. for witnesses, 25c. each, 2 00; 3 coms. for depositions, 45c. each, 1 35;	6 25	
Administering 8 oaths, 10c. each, 80; 5 continuances, 15c. each, 75c.;	3 35	
Order for judgment by default; final judgment 45; order for costs, 15c; judgment against security; order for execution, 15c.	1 55	
Issuing execution, 1 20; certificate on do., 15c.; copying and filing	45	
Costs 40; certificate, 15c.; making dockets, indexes, &c., 3 00	30	
Enrolling cause, 3 00; entering and filing 9 returns, 2 25; revenue	1 35	
stamp, 50; copy interrogatories, 2 40; 11 orders, 1 65	3 55	
Writ of error, 1 20; citation, 60; appeal bond, 60; 4 acknowledgments, 1 00	5 25	
	4 55	
	3 40	
		33 80
Record for supreme court		25 65
Com'r Morrison, taking 1 deposition		1 00

Marshal's fees.

Executing 2 summons, $2 00, 4 00; executing 14 subpœnas, 50c. each, 7 00	11 00
Miles of travel in serving process, 6c. each.	

Attorney's fee.

Docket fee on 10 depositions (9 for pl'ff and 1 for def't's)	25 00	
Docket fee in court	20 00	45 00
		$116 45

Rec'd payment of this bill of costs from Kortrecht & Craft, attorneys for Butler & Pierce.

A. S. MITCHELL, *Clerk*,
ISAAC MORRISON, *D. C.*

97 United States of America, in the Supreme Court of the United States.—December term, A. D. 1868.

WILLIAM BUTLER & W. T. HICOX, plaintiffs in error, *against* JOSIAH MAPLES, defendant in error. } Error to the circuit court [court] of the United States for the district of West Tennessee.

And the said plaintiffs in error, by John M. Palmer, their attorney, come and say there is manifest error in the record and proceedings of the said circuit court for the district of West Tennessee, in this, that the said circuit court erroneously and illegally proceeded with the trial of said cause, and rendered judgement therein in favor of the said plaintiff therein and against the defendants William Butler and W. T. Hicox, after the said plaintiff had taken a non-suit as to H. E. Bridge and Albert Pierce, defendants therein.

In this, that the said circuit court illegally and erroneously
98 allowed and permitted the deposition of George N. Carleton to be read to the jury as evidence on the trial of said cause, and overruled the objections made to the reading thereof as evidence.

And in this, that the said circuit court erroneously and illegally overruled and disallowed the [the] motion of the defendants William Butler and W. T. Hicox, for a new trial of said cause.

And this, that the said circuit court erroneously and illegally rendered judgment for the plaintiff, Josiah Maples, upon the whole record and against the said defendants for the amount of the verdict of the jury therein mentioned.

And in this, that the said record is in divers other respects vicious, defective, and void.

Wherefore and by reason of the said several errors in the said record and proceedings of the said circuit court of the United States for the district of West Tennessee, the [the] said William Butler and W. T. Hicox pray that the said judgement of the said court in the said
99 record set forth may be reversed, set aside, vacated. and for nothing held, &c.

JOHN M PALMER,
Attorney for Plaintiffs in Error.

Additional assignments of error.

1st. The court erred in charging the jury that the written agreement or power of attorney, signed "H. E. Bridge & Co., by W. Butler," and "Dan'l Shepherd," introduced in evidence by plaintiff, established that Dan'l Shepherd was the general agent of H. E. Bridge & Co.

2nd. In charging that in granting the permit, proved by Carleton, the treasury officer exercised judicial functions, and decided conclusively that the region of country to which the permit relates was within the lines of military occupation; and that "as a matter of law upon the proof in the case as to the condition of the country, and upon the permit granted to Bridge & Co., that Desha Co., Ark's, was, at the date of the contract, in Nov., '63, within the lines of military occupation of the national forces operating from the north, &c.;" and in charging that "what is such military occupation is a question of law to be decided by the court," &c.

3d. In the instruction given to the jury as to general and special
100 agency, because the same was not applicable to the proof in the case, was therefore irrelevant and calculated to mislead the jury, and also because as abstract propositions of law the instruction upon this point was erroneous.

4th. In that part of the charge which relates to the new contract between Hecox and plaintiff, by which Hecox bought the 54 bales of cotton at 50 cents per pound, and which states to the jury the effect of the contract.

JOHN M. PALMER,
Att'y for Pl'ffs in Error.

101 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the district of West Tennessee, greeting:

Because in the record and proceedings, and also in the rendition of the judgment in a cause which is in the said circuit court before you, between Josiah Maples, plaintiff, and William Butler and W. T. Hicox, defendants, a manifest error hath happened to the great damage of the said William Butler & W. T. Hicox, as by their complaint appears; we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the
102 said Supreme Court this twenty-eighth day of July, A. D. 1868.

[SEAL.] A. S. MITCHELL, *Clerk*,
ISAAC MORRISON, *D. C.*

(Indorsed:) Wm. Butler & W. T. Hicox, plaintiffs in error, vs. Josiah Maples, defendant in error. Writ of error.

Filed 28th July, 1866. A. S. MITCHELL, *Clerk*,
ISAAC MORRISON, *D. C.*

103 Supreme Court of the United States.

Know all men by these presents, that we, William Butler and W. T. Hicock, principals, and Charles Kortrecht and Henry Craft, as their sureties, are held and firmly bound unto Josiah Maples in the sum of five hundred dollars, to be paid to the said Josiah Maples, his executors, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 21st day of July, 1868.

Whereas the above bound Butler and Hicock have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the circuit court of the United States for the district of West Tennessee, at Memphis, at the September term, 1867, of the said circuit court, in the suit in which the said Josiah Maples is plaintiff, and the said Butler & Hicock are defendants; now, therefore, the condition of this obligation is such, that if the above-named William
104 Butler and W. T. Hicock shall prosecute their said writ of error to effect, and answer all costs if they shall fail to make good their

plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WILLIAM BUTLER, [SEAL.]
W. T. HICOCK, [SEAL.]
By HENRY CRAFT, [SEAL.]
Their Atto. at Law.
CHAS. KORTREHCT. [SEAL.]
HENRY CRAFT. [SEAL.]

Approved:

CONNALLY F. TRIGG,
U. S. District Judge.

(Indorsed:) Josiah Maples vs. H. E. Bridge & Co. Writ of error bond.

Filed 28th July, 1868.

A. S. MITCHELL, *Clerk*,
ISAAC MORRISON, *D. C.*

105 UNITED STATES OF AMERICA, *ss:*

To Josiah Maples, or to Henry G. Smith, his attorny of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of West Tennessee, at Memphis, wherein William Butler and W. T. Hicock are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 24th day of July, in the year of our Lord one thousand eight hundred and sixty-eight.

CONNALLY F. TRIGG,
U. S. District Judge.

106 JULY 28, 1868.—Service of within is acknowledged this day.

HENRY G. SMITH,
Atto. for Jos. Maples.

CIRCUIT COURT OF THE U. S.,
For the District of West Tennessee:

Before me, Isaac Morrison, United States commissioner, this day personally appeared J. W. Scales, who, being duly sworn, says that he executed this citation by leaving with H. G. Smith, the attorney of record of the defendant in error, a true copy of this citation, this July 28th, 1868.

T. W. SCALES.

Sworn to and subscribed before me this 28 July, 1868.

[SEAL.] ISAAC MORRISON,
U. S. Com'r.

(Indorsed:) Josiah Maples vs. H. E. Bridge & Co. Citation.
Filed 28th July, 1868.

A. S. MITCHELL, *Clerk*,
ISAAC MORRISON, *D. C.*

In the Supreme Court of the U. S.

No. 298.

WILLIAM BUTLER AND W. T. HICOX, PLAINTIFFS IN ERROR,

vs.

JOSIAH MAPLES, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

ARGUMENT OF JOHN M. PALMER FOR PLAINTIFFS IN ERROR.

In the Supreme Court of the U. S.

NO. 393.

WILLIAM BUTLER AND W. T. HICOX, PLAINTIFFS IN ERROR,

vs.

JOSIAH MAPLES, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

Maples brought his suit in the Circuit Court of the United States for the western district of Tennessee, against William Butler, H. E. Bridge, W. T. Hicox and Albert Pearce, alleging them to be partners under the style of H. E. Bridge & Co.

Process was served on Butler and Hicox only, and they appeared and plead the general issue. The plaintiff then dismissed his suit as to Bridge and Pearce. The cause was tried by a jury, and a verdict was found for the plaintiff for the sum of $9,336.

The suit was commenced to recover the sum of $11,000 for 27,500 pounds of cotton, at the price of forty cents per pound, which it was alleged the plaintiff sold to the firm of Bridge & Co.

On the trial the plaintiff proved by one Bernard Bowling that he was acquainted with Mr. Butler in the year 1863 and 1864, and that Butler, Bridge and Albert Pearce were then engaged in the cotton business at Memphis, Tennessee, and ran several steamboats in their business; amongst the boats so employed was one called the "Progress."

The plaintiff then proved by his own deposition, which was introduced, that in the month of November, 1863, he sold to one Daniel Shepherd, who has since died, one hundred and forty-four bales of cotton, at 40 cents per pound, which by a list of weights produced, weighed 63,340 pounds, and at the price of 40 cents per pound, amounted to the aggregate sum $25,336.00.

The cotton, the plaintiff testified, was at the time of the sale at a place called Red Fork, on the Arkansas river, in Desha county. "Shepherd bought it as it lay," and it was to be at his risk from the day of sale. The contract was not reduced to writing. Thirty bales were hauled to the witness' house, and were burned, as the plaintiff says he understood, "by guerrillas, jayhawkers, or sol-

diers." In January, 1864, sixty bales were burned by Crawford's (rebel) regiment, under the shed, in the place of concealment in the cane, about five miles back from the Arkansas river. The balance, fifty-four bales, was hauled by plaintiff to Red Fork and at the request of Shepherd put on board the steamer Progress. Shepherd was then on board the boat. Hicox, one of the defendants, was on the boat at the time the cotton was shipped; and, as the plaintiff testified [Printed Record, page 15], repudiated Mr. Shepherd's contract and agency. He insisted upon making a new contract or purchase of my cotton at fifty cents a pound, and then paid the plaintiff sixteen thousand dollars in full therefor. The plaintiff testified that he made this arrangement with Hicox, but, after that time, Shepherd told him that he, Shepherd, was the agent of defendants to buy cotton; that he, plaintiff, had been treated badly by defendant Hicox, and that if he would bring suit against them, he, Shepherd, would show his authority or agency. He then determined to make Bridge & Co. pay for the cotton that was burned.

"To establish the alleged agency of Daniel Shepherd, the plaintiff produced a certain written agreement which purported to be dated on the 16th of October, 1863, between H. E. Bridge & Co., of St. Louis, Missouri, and Daniel Shepherd, of Desha county, Arkansas. The names of Shepherd and of "H. E. Bridge & Co., by W. Butler," appear to the paper, and the handwriting of Shepherd and Butler are proven. A copy of this paper is given here, that it may be readily understood.

An article of agreement made & entered into the 16th day of October, 1863, by and between H. E. Bridge & Co., of Saint Louis, Mo., and Daniel Shepherd, of Desha County, Arkansas, for the purpose of purchasing R. C. Stone's and such other cotton as said Shepherd may be able to purchase in said county and vicinity, under the conditions and restrictions hereinafter set forth.

The said H. E. Bridge & Co. have this day furnished said Shepherd with four thousand ($4,000) dollars, the receipt whereof is hereby acknowledged by him, and are to furnish him such other money from time to time as may be necessary to purchase said cotton. The said Shepherd is to buy said cotton if it can be bought at the price herein set forth, and as much more as he can on the best possible terms, not paying an average of more than thirty cents per pound for middling cotton, and lower, in proportion to the grade, to be delivered at such times and places of shipment as may be agred upon. Said Shepherd is to pay as little as possible on said cotton till it is delivered on a boat, or within protection of a gunboat; and when said cotton is thus delivered on the boat and paid for, the property and ownership thereof is to vest

exclusively in said H. E. Bridge & Co., except as herein provided for his share of the profits.

14 Said H. E. Bridge & Co., are to ship said cotton to Memphis, Tenn., and sell the same to the best possible advantage; and after reimbursing themselves—the purchase money, the cost of hauling, shipping, drayage, commissions, &c.,—are to pay said Shepherd one-eighth part of the net profits. It is expressly understood that all contracts, shipments, permits, &c., necessary to purchase and get said cotton to Memphis, are to be in the name of said Shepherd; and that said H. E. Bridge & Co. may thus use his name when necessary.

Witness our hands this day & year above written.

Duplicates signed, H. H. BRIDGE & CO.,
By W. BUTLER,
DANIEL SHEPHERD."

Attest: W. R. HOUSTON.

The plaintiff, after having read the foregoing agreement, offered to read the deposition of one George N. Carleton to the jury, which was taken in the City of New York, on the 22d of March, 1866.

Carleton deposed that on the 5th day of November, 1863, he was appointed by the Secretary of the Treasury special agent of the Treasury Department for the Western District of Tennessee, and Acting Surveyor of Customs at Memphis; that about that time he was well acquainted with defendants.

It is also stated by Carleton in his deposition that "about" the month of November, 1863, Mr. Butler applied to him for a permit for the purchase and transportation of cotton in the then insurrectionary districts of the United States.

"I therefore issued to H. E. Bridge & Co., of St. Louis, Missouri, at the request of Butler, who, I understood, was a partner in the firm of Bridge & Co., upon an authority issued to them by Thomas H. Yeatman, Assistant Special Agent of the Treasury, a 'permit' to purchase and transmit to market, cotton within the lines of the Federal Military Occupation, first special agency, bearing date November 17, 1863, to the amount of fifteen hundred bales. The first special agency comprised the district of the United States West of the Alleghany mountains, known as the Valley of the Mississippi, and extending Southward so as to include so much of the States of Alabama, Mississippi, Arkansas and Louisiana, as was occupied by the National forces operating from the North."

This witness when asked to state the contents of the permit, said he was unable to do so, but referred to M. M. Griffin, of Memphis, as being able to furnish printed forms, such as were used

at that time. But one form was used. They were filled up with the names of the parties, the kind of product, the amount, and a description of the territory.

The defendants objected to the reading of the deposition of the witness, Carleton, to the jury, upon the ground that the evidence of Carleton proved the issuance of a permit to H. E. Bridge & Co., and not to Daniel Shepherd; they insisted to the Court that if the plaintiff intended to rely upon a purchase of cotton, for Bridge & Co., made by Daniel Shepherd, under the agency created by the written agreement offered in evidence, this agreement provided for Permits to be in the name of Shepherd; and they objected to the deposition upon the further ground, that it was not competent to prove the official acts of the witness, Carleton, in granting a permit by parol, without preliminary proof of the loss or inaccessibility of his official books. The Court overruled the objection to the introduction of the deposition, and it was read to the jury. The defendant excepted, and this decision is the first ground upon which the defendants rely for the reversal of the judgment.

The plaintiff then produced and read to the jury the Treasury Regulations, issued on the 11th September, 1863.

The Regulations authorize any *proper and loyal person* to apply, in the prescribed form, to the proper Supervising Special Agent, or Assistant Special Agent, for authority to purchase for money, other than gold or silver, any products of the country within the lines of the National Military Occupation, in his agency, except when prohibited by the General commanding Department, or other special military order, and to transport the same to market. *The person applying for such permission is required to file an affidavit in a prescribed form, to execute a bond with a penalty and sureties to be approved by the agent, conditioned that he will pay or secure all fees required by Regulations and with other conditions required.* See the XXth Rule as printed on pages 15 and 16 of the Record.

The plaintiff then introduced a witness to prove that the portion of Arkansas in which the place Red Fork is situated, was within the lines of Military Occupation. The witness testified that there was not, in November, 1863, a "Confederate" military post, or organized "Confederate" force, nearer than 150 or 200 miles of Red Fork, and that there were few, if any, straggling soldiers in that neighborhood at that time.

The additional evidence in the case, is that of several persons who were acquainted with Daniel Shepherd in the fall of 1863, and testify that he bought cotton in Desha county, Arkansas, and professed to be doing so as the agent of Bridge & Co.; and of a witness who testified that Shepherd bought other cotton as agent

for defendants, under special restrictions as to price, &c.; and that of the plaintiff who was introduced as a witness before the jury. and testified that Shepherd was on board the boat at the time he sold the 54 bales of cotton to defendant, Hicox; that he then demanded of Shepherd a settlement for the cotton destroyed, and Shepherd gave him his note for $11,000. Shepherd was afterwards killed, and the agreement offered in evidence was found amongst his papers. Shepherd had never professed in any conversation with plaintiff to have written authority from Bridge & Co. Sometime after the note was given, Shepherd induced the plaintiff to commence this suit against the defendants. This is all the evidence thought to be relevant to the merits of the case.

On the trial the Judge charged the Jury:

"In this case the plaintiff seeks to recover the price of 90 bales of cotton, at 40 cents per pound, alleged to have been sold by him to Daniel Shepperd, as agent for d'fend'ts:

"In proof of Shepperd's agency for defendants, or for H. E. Bridges & Co., of which firm defendants were members, a written agreement or power of attorney has been introduced in evidence by plaintiff. purporting to be executed by H. E. Bridges & Co. and Daniel Shepherd. It has been claimed on behalf of plaintiff. and denied on the part of defendant, that this paper constitutes a partnership between H. E. Bredes & Co. and Daniel Shepherd as to third persons; and that Shepherd's contracts made under it were made by him as partner, and as such were binding on the partnership. My construction of this instrument is, that it does not contemplate that Shepherd should have any ownership in the cotton to be bought by him, or any interest in or control over it, beyond the proportion of the net profits which he
73 was to receive as compensation for his services, and that this interest in the profits was fixed as a measure of his compensation merely. I conclude therefore, and do instruct you, that it did not even as to third persons create a partnership.

It has been claimed for d'f'd'ts that the contract for the purchase of the cotton from pl'ff, if made by Shepherd at all, was made in an insurectionary district, and was illegal under the act of Congress, unless made under a permit granted by the proper authority. This is true. It is moreover true that even if Bridges & Co. had a permit to buy cotton within the limits of military occupation of the national forces operating from the north, a purchase made in Desha county, Arkansas, would have been contrary to law, and the contract illegal and void, unless made in a portion of said county which was at the time within the lines of such military occupation. What is such military occupation is a question of law to be decided by the court; and I instruct you that if you

believe the testimony in the case as to the location of federal forces and garrisons in the region of country where the contract was made, and (as to the desire of the inhabitants) submitting to the authority of the government to restore their relations with the government as manifested by their taking the oath of allegiance, and applying for and receiving "protection papers," then
74 there was such military occupation as is contemplated by the law of Congress referred to.

But in addition to this, the special agent of the Treasury Department, who was authorized to grant permits, exercised judicial functions in deciding what country was within the lines of military occupation; and when he granted a permit to buy cotton in a designated region, the permit itself was a decision by him that the region so designated was so occupied. When an officer of the government, thus clothed with judicial functions, grants a permit in the exercise of those functions, it would be very unjust to hold the party receiving the permit and acting under it responsible for that decision. If therefore, in this case, a permit was granted, you are bound to believe that the special agent who granted it did decide, in doing so, that the region of country to which the permit extends was within the lines of military occupation; and I instruct you, as a matter of law, upon the proof in the case as to the condition of the country, and upon the permit granted to Bridges & Co., that Desha County, Arkansas, was at the date of the contract, in November, 1863, within the lines of military occupation of the national forces operating from the north, and that the pl'ff
75 and Shepherd had the right to make the contract for the sale and purchase of the cotton.

These questions disposed of, the case is resolved into a question of agency. That the contract for the cotton was made between plaintiff and Shepherd, has been fully proved. Now did Shepherd have authority to bind defendants by that contract? If Shepherd had gone only to pl'ff to buy cotton claiming to be the agent of d'f'd'ts to buy his cotton alone, pl'ff should have enquired for his authority; and if he contracted with Shepherd without doing so, would contract at his own risk. If it turned out afterwards upon other proof that Shephard had authority to act for d'f'd'ts, it would be all right; but if otherwise, d'f'd'ts would not be bound by Shepherd's contract. Under this view, Shephard dealing and claiming authority to deal with plaintiff alone, Shepherd would be a special agent for Bridges & Co. If, however, Shepherd went into Desha county to buy cotton generally, wherever he could get it on satisfactory terms, representing himself to be the agent of Bridges & Co. to make such general purchase, then he would be claiming to be a general agent, and if

really sent there to purchase cotton by Bridges & Co. would be their general agent; and a different rule as to the terms
76 and extent of his agency and plaintiff's duty to look to them, would be applicable from that which I have stated in regard to a special agency.

A principal is bound by all that a general agent does within the scope of the business in which he is employed as such general agent; and even if such general agent should violate special or secret instructions given him by his principal, and not disclosed to the party with whom the agent deals, the principal would still be bound if the agent's acts were within the scope of the business in which he was employed, and of his general agency. For illustration: if a general agent to buy cotton agrees to pay 40 cts. p'r pound, when he had been instructed by his principal not to agree to pay more than 30 cents, the principal is nevertheless bound by the contract, unless the party selling the cotton was aware of the limit as to the price fixed by the principal. The reason is, that it is within the scope of the agency to buy the cotton at 40 cents, and the private instructions do not effect those to whom they are not disclosed.

However, a party dealing with a general agent, who seeks to hold the principal bound for the agent's acts or contracts, must show, in order to recover, that the agent held himself out as
77 general agent, and that in fact he was such general agent. If, therefore, in this case Shepherd held himself out as the general agent of H. E. Bridges & Co., d'f'd'ts are bound by the contract which he made with plaintiff for the cotton, notwithstanding Shepherd may have agreed to pay more for the cotton than his principal had authorized; and if, as general agent for Bridges & Co. to buy cotton in Desha County, Shepherd was not authorized by Bridges & Co. to buy cotton except to be delivered on board the boat, and in violation of their instructions he did buy pl'ff's cotton, and agreed to receive and accept delivery of it elsewhere than on the boat, unless pl'ff knew of these instructions, defendants are bound by the contract which Shepherd made, because it was within the scope of his general agency just as much as was the agreement to give for the cotton a larger price than that to which he was limited by the instructions of Bridges & Co.

As agent for Bridges & Co. to buy cotton, Shepherd could not insure cotton; and if he had bought pl'ff's cotton to be delivered on the boat, but agreed with pl'ff that, until so delivered, it should be at the risk of Bridges & Co., then Bridges & Co. would
78 not be bound to pay for the cotton if burnt or otherwise destroyed. But, as already stated, Shepherd could bind Bridges & Co. by his contract to accept delivery of the cotton where it then was, instead of on the boat, and his acceptance of

such delivery would vest the property in the cotton in Bridges & Co., and they would be bound to loose the cotton if it should be afterwards destroyed. Therefore, if Shepherd did buy pl'ff's cotton for Bridges & Co., representing himself as their general agent. and did agree to consider it as delivered, and did accept it as delivered where it then was, Bridges & Co. were bound by this contract, and the cotton became their property as soon as so accepted by Shepherd, and, if subsequently destroyed, must be their loss, in the absence of any knowledge on the part of the pl'ff that Shepherd had violated his instructions.

But it is said that plaintiff agreed to rescind and abandon the contract made with Shepherd, and made a new contract with d'f't Hicock, by which he sold to Hicock the 54 bales of cotton not burned, at 50 cents p'r pound, and that this discharges the former contract made with Shepherd. The effect of the new contract must depend on the circumstances. If plaintiff & Hicock
79 came together, and made a contract about the 54 bales, when all the facts were known to pl'ff—that is, if pl'ff knew that Shepherd had exceeded his authority, and then made the new contract as proven, this new contract would discharge d'f'd't from the former contract between p'lff & Shepherd. But in order that the new contract might have this effect, pl'ff must have known all the facts—all about Shepherd's authority; and if not thus advised —if anything known to Hicock, which pl'ff was entitled to know was not disclosed to pl'ff—pl'ff was not bound by the new contract, and d'f'd'ts were not discharged from the old one. But it is claimed on the part of d'f'd'ts that the taking by pl'ff of Shepherd's note afterwards, in settlement for the burnt cotton, was a discharge of d'f'd'ts. This would depend upon the same circumstances as those referred to as fixing the effect of the new contract for the 54 bales. If pl'ff knew all the facts, and voluntarily agreed to look to Shepherd for the value of the burnt cotton, he would be held to his contract, and would have no further claim on Bridges & Co. Upon this point it is alleged for pl'ff that Hicock denied to him that Shepherd had any agency whatever for Bridges & Co.,
80 and that pl'ff believed this, and acted solely upon the representation of Hicock when he took Shepherd's note. If you should believe that he was induced to make the new contract for the 54 bales, and took Shepherd's note upon Hicock's representations as stated, then pl't'ff can repudiate all he did under the influence of those representations on account of Hicock's fraud; and can go back to the first contract made with Shepherd. But if pl't'ff knew Shepherd's authority before he did these things, he will be bound by them, and d'f'd'ts discharged.

If, after Shepherd told pl't'ff that he could furnish him the proof

which would enable him to recover in a suit against Bridges & Co., pl't'ff sold the 54 bales of cotton to Hicock for 50 cents a pound, and took Shepherd's note for the burnt cotton, then pl't'ff is bound by their new contract, and Bridges & Co. discharged. If pl't'ff is to recover at all, the measure of the recovery is the price of the 144 bales, at 40 cents per pound, upon which is to be credited whatever sum has been paid to pl't'ff, including the 54 bales
81 at 50 cts. per pound. The jury may look to the amount for which Shephard gave his note as being the amount due at the time, because it was so agreed by Shepherd, who was agent and familiar with all the facts, or they can make calculations for themselves.

If the contract between pl't'ff and Shepherd was that the cotton should be paid for on delivery, pl't'ff is entitled to interest from the time of the delivery if the jury choose to give it, but they may, in their discretion, allow no interest, or so much interest as they may think just and right.

And thereupon, before the jury retired, the defendants, by their counsel, excepted to the foregoing charge of the court upon the following points and in the following particulars, viz:

That the court erred in charging—

1°. That the written agreement or power of attorney signed "H. E. Bridges & Co., by W. Butler," and "Daniel Shepherd," introduced in evidence by plaintiff, established that Daniel Shepherd was the general agent of H. E. Bridges & Co.

2°. That in granting the permit proved by Carleton,
82 the treasury officer exercised judicial functions, and decided conclusively that the region of country to which the permit relates was within the lines of military occupation, and that "as a matter of law, upon the proof in the case as to the condition of the country, and upon the permit granted to Bridges & Co. that Desha County, Ark., was, at the date of contract, in Nov. '63, within the lines of military occupation of national forces operating from the north," &c.

That the court erred—

3°. In the instruction given to the jury as to general and special agency, because the same was not applicable to the proof in the case, was irrelevant therefore, and calculated to mislead the jury; and also because, as abstract propositions of law, the instruction upon this point is erroneous.

4°. In that part of the charge which relates to the new contract between Hicocks and plaintiff, by which Hicock bought the 54 bales of cotton at 50 cts. p'r pound, and which states to the
83 jury the effect of the new contract.

Which objections were disallowed and overruled by the

court, to which the defendants by their counsel excepted at the time.

It was correctly understood by the parties on the trial in the Circuit Court, that the plaintiff was bound to prove two essential facts, both of which were strenuously disputed by the defendants. These facts were first: That the place where the contract relied upon by the plaintiff, was made was at the time within the lines of military occupation by the national forces operating from the north, and that Daniel Shepherd was duly licensed to trade according to the treasury regulations then in force; and second, that Shepherd, with whom the plaintiff claimed to have dealt, was at the time and in respect to that transaction, the agent of defendants.

I.

The only evidence offered by the plaintiff for the purpose of proving that the place where the contract was made (Desha County, Arkansas,) was within the lines of military occupation by the national forces, and that Shepherd was licensed to trade was the deposition of the witness Carleton. This deposition was admitted in evidence by the court against the objections of defendants, and, as has been before stated, the ruling on this point is the ground of the first exception.

If this deposition was improperly admitted as evidence, the case of the plaintiff below is without support; for, as will be noticed, the charge of the judge assumes that Carleton proves for the plaintiff all that is necessary to establish both that the place of the contract was within the lines of military occupation and that Shepherd was licensed to trade. There is really no other evidence upon these important points.

It is a sufficient objection to the competency of any evidence offered during the progress of a trial that it is irrelevant or in other words that it does not tend to establish any fact in issue between the parties, and that objection is urged to the admissibility of Carleton's deposition.

It is not pretended that the deposition of this witness proves or tends to prove the issuance of a permit to Daniel Shepherd, or that the permit spoken of by him referred to or included Shepherd, but it was allowed by the court to go to the jury upon the theory that proof of a permit to Bridge & Co. was sufficient to legalize the transaction between Shepherd and the plaintiff, if it appeared that Shepherd was either actually or constructively the agent of defendants.

It is not admitted t hat this is the correct view; Bridge & Co. are the only persons described in the permit, of which Carleton testifies, and Shepherd was not entitled to engage in trade either under the words of the permit or under any authority fairly derivable from it.

"The great principle in these cases is that subjects are not to trade with the enemy without the special permission of the Government, and the material object of the control which the Government exercises over such a trade is that it may judge of the particular persons who are fit to be entrusted with an exemption from the ordinary restrictions of a state of war."

The Jonge Johannes, 4 C. Rob., 264.

It was not pretended that the evidence of Carleton alone or in connection with any other evidence offered, or that the plaintiff intended to offer, would prove that Shepherd was embraced in the application of Bridge & Co., or that he was in any way described in the permit, or that the Government authorized Bridge & Co. to appoint agents. "Licenses of this character are strictly construed."

The Hoop. 1 C. Rob., 216.

Bridge & Co. could not appoint agents to purchase cotton unless authorized by the Government to do so, and it is not pretended that the permit of which Carleton testifies, authorized them to make such appointments.

II.

The Judge charged the jury at length upon the points controverted by the parties, and three exceptions were taken to the rulings of the charge.

It was first excepted, that his instruction to the jury, that "the written agreement or power of attorney"—using the descriptive language employed by the judge—signed by H. E. Bridge & Co.. by W. Butler, and Daniel Shepherd, introduced in evidence by the plaintiff, established that Shepherd was the general agent of Bridge & Co.; and with reference to the same subject it was further excepted, that upon the questions of general and special agency, the charge was not applicable to the facts in evidence, and was, for that reason, irrelevant and calculated to mislead the jury; and also, that as a statement of abstract questions of law, the charge was erroneous.

The written agreement or power of attorney referred to will be found at length on pages 2–3 Ante.

It was denied by the defendants below, and is denied here, that this agreement constituted Daniel Shepherd the general agent of Bridge & Co.

The instrument under consideration, like all writings, is as between the parties to it to be so interpreted, if interpretation is necessary, as to make it accomplish the intentions of the parties, and ordinarily the intent is readily ascertained by a consideration of the language employed.

The paper is described on its face as an "agreement between H. E. Bridge & Co., of St. Louis, Missouri, and Daniel Shepherd, of Desha county, Arkansas," and it purports for its object the purchase of cotton in said (Desha) county and vicinity.

It also designates the methods to be employed in the contemplated undertaking, and defines the duties as well as the rights of the respective parties.

It will be observed as a material fact to be understood in considering this "agreement" that the parties contemplated the purchase of cotton in a district in which all commercial intercourse was prohibited by law, except under special circumstances, and to proper and loyal persons, duly licensed by an agent of the treasury department, upon terms and conditions prescribed by the secretary.

The defendants, then, had no power at the date of the agreement in writing to authorize Shepherd to buy cotton in the district of country where the plaintiff alleges his sale was made, nor were they capable of controling the conditions upon which he could obtain "a permit" from the treasury agent to trade in the district referred to.

The written agreement contains no evidence that Bridge & Co. undertook to control the conditions, or to qualify Shepherd for engaging in trade; on the contrary, Shepherd, by a stipulation which was overlooked or disregarded by the judge, undertook that all contracts, permits, shipments, &c., necessary to the purchase and transportation of cotton to Memphis, should be in his name, and that Bridge & Co. should have authority to use his name in the business whenever necessary.

This undertaking of Shepherd amounted to an engagement, on his part, to obtain permission from the treasury agent to buy cotton in the insurrectionary district referred to in the written paper, and to transport it from thence to Memphis.

To obtain such "permit" it was necessary to furnish satisfactory evidence that he was a loyal and proper person, and also to comply with certain prescribed forms, and give bond with such penalty and security as might be required by the proper officer, and with such conditions as were prescribed by the rules of the treasury department.

[See XX Rule, record, page 11.

The agreement in writing, even if intended by the parties, to constitute Shepherd the general agent of Bridge & Co. to buy cot-

ton in the insurrectionary districts was inoperative as an appointment until he by obtaining the necessary "permit" or license, qualified himself to execute the contemplated agency.

The acts to be done by Shepherd, related to his legal capacity to purchase cotton, which was the object of the agreement, and were of necessity, conditions precedent to the agency; and what will be especially noticed is, that the duty of capacitating himself to purchase cotton in the proposed district by the agreement, was a legal and personal obligation, and Bridge & Co. could not waive its performance.

It is not claimed that Shepherd complied with the stipulations contained in this contract, from which the proper conclusion is that the agreement in writing never became operative.

"There are two principles in relation to the law of agency, on one of which it is founded, while the other measures the responsibility of the principal for the acts of the agent. The first of these is, that the agent is but the instrument of the principal who acts by him. * * * And the second of these principles is, that as between the principal and a third party who has supposed himself to treat with a principal by one purporting to be his agent, the principal is responsible for and is bound by the acts of his agent upon either of two grounds which may coexist or may not.

"The one of these grounds is, that he has actually created the agency; the other is, that he has by words or acts fully authorized the third party to believe the person to be his agent.

[1 Parson's on contracts, pages 39–40.

This statement is at once comprehensive and accurate, and the rulings of the court will be compared with the rules of law.

III.

But if Shepherd had complied with the conditions of the agreement, it does not follow that its provisions constitute him the general agent of Bridge & Co. If the language of the agreement was in other respects sufficient for that purpose, it would not so operate on account of the conditional provisions it contained.

The parties to the agreement contemplated a particular enterprise altogether unlike ordinary commercial operations and it was the mistake of the judge in his charge to the jury on this branch of the case, that he failed to inform them that the instrument in question was to be construed with reference to all the circumstances of the transaction, and that he overlooked the important facts, a part of the public history of the country, that the region where this transaction occurred, was, so far as the safety of persons and property were concerned, practically in the possession of the public enemy.

It was occupied by a hostile population, and was traversed by "Confederate soldiers, guerrillas and jayhawkers" at pleasure.

All these classes of persons were animated by the bitterest prejudices against the people of the loyal States: so much so, that a sale of property to any person adhering to the government, was to invite its destruction.

This state of things was known to the plaintiff, and to Shepherd, and the fact is, as was testified by the plaintiff, that thirty bales were burnt soon after the pretended sale, by "guerrillas, jayhawkers, or soldiers", and in January, 1864, sixty bales were burned by Crawford's rebel regiment in the place where it had been concealed, perhaps by the plaintiff himself.

Fully understanding this state of things, Bridge & Co. attempted to protect themselves by inserting provisions in their contract with Shepherd, that he should obtain permission from the proper authorities, to engage in the contemplated trade, that the ownership of any cotton he might contract for, should remain in the original proprietor, or be vested in himself, until delivered on a boat for transportation, or "within the protection of a gunboat," *and paid for*, and then to vest in Bridge & Co.

It is one of the fallacies of the ruling of the judge, that he not only attempts to apply the rules of law that relate to peaceful regulated commerce to the anomalous and barely tolerated trade in the insurrectionary districts during the late civil war, but he pushes those rules and principles much too far, and disregards legal distinctions of the most important character.

He did not tell the jury that the defendants, by any language employed in the written agreement, authorized Shepherd to make the contract with the plaintiff upon which he insists, nor does he place the liability of the defendants upon the alleged contract made by Shepherd upon the ground of any word or act of theirs that would justify the plaintiff in believing Shepherd to be their agent in the transaction, but the contract is stated by him to be that "*if Shepherd went into Desha county to buy cotton generally wherever he could get it on satisfactory terms, representing himself to be the agent of Bridge & Co., to make such general purchases, then he would be claiming to be a general agent, and if really sent there to purchase cotton by Bridge & Co., would be their general agent.*" So that the jury were informed that the defendant's liability was to be determined, by Shepherd's assertion of the extent of his authority, instead of by their own acts or declarations.

[See 1 Parson's on contracts, page 45.

And the conclusion that Shepherd had authority to bind the defendants, citizens of a northern State who did not dare visit the neighborhood, to be responsible for the safety of the plaintiff's cot-

ton, as against bands of marauders, is drawn from premises thus stated by the court.

IV.

But the charge of the judge on the point embraced in the exceptions quoted is unfortunate in the omission to submit and explain to the jury an important modification of the rules of law that relate to the liability of the principal for the acts of a general agent.

It was the duty of the Court to inform the jury that though, under some circumstances, a principal is liable for the unauthorized acts of an agent, no such liability can exist in favor of one dealing with an agent that had notice at the time that the particular act of the agent was without the authority of the principal.

Indeed it is hardly proper to say that this proposition is a modification of the general rule, for it is a part of the rule, and is in itself so reasonable and just, that it is presumed no one will be inclined to question it.

And it is well settled as a rule of evidence that a knowledge of such facts and circumstances as are sufficient to put a prudent man, about to engage in a transaction, upon inquiry, is equivalent in legal effect to an actual knowledge of the true state of the facts.

Under the peculiar circumstances of the country where this transaction occurred, there could be no such thing as commercial confidence. No prudent man would consent to sell to the assumed agent of strangers, property of the value of that described by the plaintiff without careful inquiry as to the responsibility of the principals, and the extent of the authority of the agent. Especially would the vendor exercise great circumspection when the public knowledge of the sale of the cotton would greatly increase the danger of its destruction. The presumption is that the plaintiff exercised such common prudence, and he is chargeable with the knowledge of such facts as it was the duty of Shepherd to communicate to him upon inquiry.

It was the duty of the plaintiff to know the exact relations between Shepherd and Bridge & Co., if, as he alleges, he recognized him as their agent in the contract for the purchase of the cotton.

It is necessary again to observe that the transaction between Shepherd and the plaintiff was *prima facie* unlawful. Commercial intercourse was prohibited in the district of country where the transaction occurred, and the prohibition applied as well to those who resided within the insurrectionary districts, as to the citizens of the States that adhered to the national cause.

No person could lawfully offer to purchase cotton unless properly "permitted" to purchase by the proper officer; nor could the plaintiff lawfully sell to one not legally licensed to buy.

If then it is true that Shepherd, claiming to be the agent of Bridge & Co., offered to treat with the plaintiff for the purchase of cotton, it was his duty before making sale of the cotton, to know that Bridge & Co., were duly licensed, and that Shepherd was fully authorized by them to act under their license.

The first step in the progress of such an enquiry would have developed the fact that Shepherd had no authority from defendants to make the contract upon which the plaintiff insists.

It is submitted that the plaintiff cannot be allowed to deny that he enquired of Shepherd for evidence that Bridge & Co. were licensed to trade, and that he was their duly authorized agent.

And it is insisted that if it was conceded that the agreement in writing was sufficient to constitute Shepherd the general agent of defendants to buy cotton, it would not justify the contract stated by the plaintiff.

The "agency" contemplated the purchase of cotton for immediate transportation to market, to be paid for in cash on delivery. Such an arrangement would not authorize the agent to purchase cotton to be held for an indefinite time at the risk of his principals.

There are no words in the agreement that can be construed to authorize Shepherd to enter the insurrectionary district and purchase and accept the delivery of cotton for the defendants, and assume for them all the risks of its destruction, and such is the contract relied upon by the plaintiff. Such a contract would not be within the scope of a general agency to purchase cotton.

It must have been known to Shepherd and to the plaintiff that the risk of the destruction of the cotton in question, would be greatly increased, if not absolutely insured, by such a sale as he claims to have made, and he was bound to know that such a contract as he relies upon, if made by Shepherd, was a breach of his duty and a fraud upon Bridge & Co.

V.

It is alleged in the second exception, that the court erred in instructing the jury that in granting the permit, proved by Carleton, the treasury officer exercised judicial functions and decided conclusively that the region of country to which the permit relates was within the lines of military occupation, and that as a matter of law upon the proof in the case as to the con-

dition of the country, and upon the permit granted to Bridge & Co., that Desha county, Arkansas, was at the date of the contract, within the lines of military occupation, &c.

The legal propositions decided by the court, that are questioned by the exception, are as follows:

1. That the decision of Carleton, the treasury agent, in granting "a permit" to Bridge & Co., determines conclusively that the region of country to which the "permit" relates, was within the lines of military occupation, &c.

2. That as a matter of law upon the facts proven to the court, Desha county, Arkansas, was within the lines of military occupation, &c., and that upon the permit granted to Bridge & Co., Shepherd had the right to make the contract for the purchase of the cotton.

It is to be regretted that "the permit" supposed by the judge to have been granted by Carleton to Bridge & Co., is not to be found in the record. If it was, it would be easy to determine a point upon which there is now no evidence, that is, what territory was described in the permit.

The court, however, assumed that Desha county, in the State of Arkansas, was embraced in the territorial description contained in the permit, and that the permit conclusively determined that it was within the lines of military occupation.

It is not intended to complain of the meagreness of the evidence to support the assumption of the court as to the territory described; but it is believed that the permit of the treasury agent, is only prima facie evidence that the territory described in it was within the lines of military occupation. See *United States vs. Weed*, 5 *Wallace*, 62.

But the judge assumed, as a foundation of his inferences, the existence of other facts, that it is believed, cannot be found in the record. He assumes that Daniel Shepherd, on the 20th day of November, 1863, as the agent of H. E. Bridge & Co., bought the cotton of the plaintiff, and that the purchase by Shepherd was authorized by a permit issued to Bridge & Co., at Memphis, on the 17th day of November, of the same year.

The injurious influence of this ruling of the court upon the defense of the case, will be properly estimated, when it is observed that it relieved the plaintiff from the burden of proving that Shepherd was duly licensed to purchase cotton- and compelled the jury to accept the conclusion of the court as to the existence of facts that are otherwise without support.

It was unlawful for Shepherd to engage in the purchase of cotton in the district where this property was situated, without the license of the government issued in pursuance of the regu-

lations of the treasury department, and the plaintiff is bound to show such "permit" to Shepherd, for it was illegal for him to sell to one who had not the permission of the government to buy.

And the permit required by the act of Congress, the proclamation of the President, and the treasury regulations to authorize trade in the insurrectionary districts, was personal, and the authority conferred by the permit could neither be assigned nor delegated to another.

It will be seen that the regulations direct that each person before receiving a permit, shall make affidavit that he is, in all respects, loyal, and true to the government of the United States, that he will conform to the proclamations and orders of the President of the United States, and of the Military Governors and Generals, exercising authority under him, and to depart ment regulations, &c. See printed record, page 12.

It would be regarded as a startling doctrine, if it was held that the licensee of the President, selected with such anxious care, could under a permit granted to him, send out into the insurrectionary districts, such persons as he might select for the purpose, without regard to their relations to the government, or of their inclinations and feelings with respect to the national interests. Such a construction of the permit would have defeated the vigilance of the Government, and filled our camps with the enemy's spies.

The burden of proving a license to Shepherd was upon the plaintiff, and the law presumes nothing in his aid; and a license issued to Bridge & Co., authorizing them to purchase fifteen hundred bales of cotton cannot, for the reasons already stated, be invoked to protect and legalize this transaction.

But if it were true as a matter of law, that the rights acquired by Bridge & Co., under the permit, admitted of delegation, was it not incumbent upon the plaintiff to prove a delegation to Shepherd. It cannot be presumed that such delegation was made.

If such was the duty of the plaintiff, it is insisted that the Court erred in assuming, without evidence, or upon insufficient evidence, that Bridge & Co., had delegated to Shepherd the authority to purchase the cotton in question.

It seems that nothing is clearer than that the charge of the Court upon this point is erroneous both in fact and in law.

By the terms of the written agreement offered by the plaintiff as evidence of the authority of Shepherd to act as the agent of the defendants, and which was dated on the 16th day of October, 1863, it appears that it was the intention of the parties that Shepherd should procure permits in his own name to au-

thorize any purchases of cotton he might make, and that on the 17th day of November, 1863, Bridge & Co. obtained a permit authorizing them to buy fifteen hundred bales of cotton, and then without evidence of any further communication between the parties, the court charged the jury that the granting of the permit of which there is no evidence that either Shepherd or the plaintiff had any knowledge whatever conclusively determined for the purposes of the plaintiff in this suit, that the place where the contract was made was within the lines of military occupation, and at the same time legalized the transaction between Shepherd and the plaintiff.

To return again to the evidence, it will be discovered that the plaintiff relied upon the written agreement of the 16th of October, 1863, for proof of Shepherd's agency, but he does not pretend that at the time of his contract with Shepherd, or at any other time, Shepherd claimed to have a permit to trade. Indeed as appears from the testimony of the plaintiff, he had no curiosity, and Shepherd volunteered no information to him on the subject of a permit.

It nowhere appears that either Shepherd or the plaintiff at the time of making the contract, knew of the existence of the permit issued to Bridge & Co. on the 17th day of November, or that they relied upon it to justify the alleged contract of sale, and there is no evidence whatever that Bridge & Co. authorized Shepherd to use the permit issued to them, even if it was competent for them to do so. The law of the charge of the judge then is that the contract between Shepherd and the plaintiff, though prima facie illegal, was authorized by the existence of a permit issued to Bridge & Co., of which the parties to the contract were at the time ignorant, and that Bridge & Co., after furnishing the required evidence of their own fitness to be licensed to trade in the insurectionary districts, and giving the bonds and taking the oaths prescribed by regulations, obtained a permit, which, without their consent or expectation, operated to authorize a party of whose loyalty and fitness nothing is known, to do every act or thing that "the permit" licensed them to do.

The act of the Treasury agent, in granting the permit to Bridge & Co., proved by the witness, Carlton, did not decide anything of which the plaintiff can avail himself in this action, for he did not rely upon it to justify the contract, nor did Shepherd rely upon it, nor, as has been already said, is there any reason for believing that at the time of the alleged sale either of them knew of its existence.

The evidence in the case justifies the suspicion that the claim

set up by the plaintiff below, that Shepherd was the agent of the defendants in the purchase of this cotton, was an afterthought suggested by the circumstances that Shepherd died without paying the note he had given for the cotton destroyed, and the discovery amongst his papers of the written agreement offered in evidence.

This agreement which proves that Shepherd did not have the authority of defendants to make the contract proven by the plaintiff, with evidence that Shepherd did not have a permit to purchase cotton in the insurrectionary districts, is made by aid of erroneous instructions given by the Court as to the law the foundation of a verdict.

In conclusion it seems proper to say that it was necessary to a recovery by the plaintiff below to prove the contract of sale, and the authority of Shepherd to act for and bind the defendants. And it was also his duty to establish, by the clearest evidence that Shepherd was properly licensed to trade in the district of country where the transaction occurred, and it is respectfully claimed that the charge of the judge upon all the points excepted to is erroneous, and the judgment of the Court below ought, for that reason, to be reversed.

JOHN M. PALMER,
Of Counsel for Plaintiffs in error.

IN THE

Supreme Court of the United States.

No. 177.—December Term, 1869.

WM. BUTLER and W. T. HICOX, Plffs. in Error,

vs.

JOSIAH MAPLES.

Brief for the Defendant in Error.

D. K. McRAE,

For Defendant in Error.

J. L. Pearson, Printer, corner 9th and D streets.

IN THE

Supreme Court of the United States.

No. 177.—December Term, 1869.

WM. BUTLER and W. T. Hicox, Plaintiffs in Error.

vs.

JOSIAH MAPLES.

In error to the Circuit Court of the United States for the Western District of Tennessee.

Brief for the Defendant in Error.

Josiah Maples sued William Butler, H. E. Bridge, W. T. Hicox, and Albert Pearce, partners, under the style of H. E. Bridge & Co., by summons to the Circuit Court of the United States for the Western District of Tennessee, for certain cotton sold and delivered to them in the county of Desha in the State of Arkansas, in November, 1863.

At the summons Maples, the plaintiff, was a resident of Tennessee, and all the defendants were non-residents. The summons and declaration were served on Butler and Hicox, and due return made of the service. There was no service upon the others and no return of non est, nor any return as to them, in so far as appears of record.

At the trial the suit was dismissed as to those not served, and issue was joined between the plaintiff, Maples, and Butler and Hicox, defendants.

Transcript, pages 1, 2.

No question was made as to the jurisdiction, but exception is taken that the court erroneously proceeded with the trial against Butler and Hicox after the dismissal as to the other two.

Pages 4 and 34.

The reply is that the proceeding was under the act of 1839, ch. 37.

5 Stat. at Large, 321.

Conkling's Treatise, 153.

No question was made as to the partnership at the trial, and the jury found the fact upon the proof.

The plaintiff alleged that the sale and delivery were made to one Daniel Shepherd, then residing in the county of Desha, Arkansas, where the plaintiff had then a plantation which he was working, and who was the agent of the defendants; who, with the two not served, were residing in Memphis, doing business as partners, under the style of H. E. Bridge & Co. Both the places named being within the insurrectionary districts, as proclaimed by the President.

Out of abundant caution the plaintiff offered in evidence the deposition of George N. Carleton for the purpose of proving the fact that, as special agent of the Treasury Department he granted a permit to H. E. Bridge & Co. to purchase cotton in the 1st special agency, within the lines of the Federal military occupation, which included Desha county, where the cotton was sold and delivered, having duly notified the defendants to produce the original permits, which they refused to do.

Transcript, pages 6–7.

Exception was taken to this evidence that it was secondary and not the best, because that the official books or records of the office in which the permit was granted should be produced or proved to be inaccessible.

Page 6.

There was no error in the admission of this testimony.

1st. The weight of authority unquestionably is that there are *no degrees* of secondary evidence.

1st Greenleaf, par. 582.

See also Note 2 to par. 84.

At all events the nature of the case did not show the existence of a more satisfactory kind of evidence accessible to the plaintiff, nor could the court presume such existence; and according to the strictest American doctrine it is only in such case that the party who is driven to the production of secondary evidence is required to offer the best.

9 Wh., 582.

Note 2, par. 84, as above.

The rule that excludes secondary evidence does not mean that everything is secondary which is not of the highest grade, but only that which discloses the existence of other evidence the nonproduction of which it would seem, if produced, to work against the party offering it.

37 Penn., 87.

There was no evidence that any record was required to be kept, or that such record was accessible to the plaintiff.

Besides, the permit was purely a collateral matter, not the matter in issue, and the evidence, therefore, was not secondary.

1 Greenl., par. 89.

Again, as there was no dispute as to the residence of all the parties within the insurrectionary districts, there was no need of a permit, and the evidence was immaterial and harmless.

A second exception to this evidence was taken, that it showed a permit to H. E. Bridge & Co. and not to Daniel Shepherd.

If there might be any force in this exception were the suit brought on the permit, there is certainly none, since

the complaint is not for any violation of the permit, but upon a promise and obligation wholly independent of it —the permit bearing at most a collateral relation to it.

Among other evidence to prove the agency or authority of Shepherd to make the purchase and bind the firm the plaintiff offered a paper writing, which, being exhibited to a witness, Lamb, its execution by the defendants and said Shepherd was proved.

Transcript, page 5th.

The defendants excepted to the charge of the court "that this agreement established that Daniel Shepherd was the general agent of H. E. Bridge & Co."

Page 34.

The charge of the court is set out in full, and it does not appear that any such instruction was given.

Pages 26–7–8.

Yet, as an abstract proposition, the instruction would have been strictly correct, for the "*agreement*" showed the purpose of the parties to be that Shepherd should buy "*R. C. Stone's and such other cotton as said Shepherd may be able to buy in said county and vicinity.*"

Page 5.

This is a fair illustration of a general agency for the particular purpose specified.

1 Par. on Con., 39.
Story on Agency, 17, 22.
4 Barbour, 369.

There was a further exception to the charge on this point: "That the instructions were erroneous as to general and special agency, because not applicable to the proof, and because not correct as abstract propositions.

Page 34.

The instructions in substance were:

1st. If Shepherd went to buy plaintiff's cotton alone,

it would be his duty to inquire for his authority if he professed to buy as an agent, and, if he did not, the peril would be his.

But if he went about buying cotton generally, and representing himself as an agent, and he should turn out to be an agent, then he would be a general agent, and a different rule would prevail as to the duty of the plaintiff to look into the extent and terms of his agency.

Page 26.

2d. (And this shows the meaning of his honor in the instruction just recited.) "A principal is bound by all that a general agent does within the scope of the business for which he was employed, and even if such agent should violate special or secret instructions given him by his principal, and not disclosed to the party with whom the agent deals, the principal would be bound if the agent's acts were within the scope of the business. However, a party dealing with a general agent must show that he so held himself out, *and that in fact he was such general agent.*"

Page 27.

The meaning of all which is that a principal who gives an agent an apparent authority, and holds him out as his general agent, is bound though he violates private instructions.

The instructions, as abstract propositions, are founded in right reason, and are sustained by all the authorities.

1st Par. on Con., 40, 41. Note D.
Story on Agency, 126, 133.
24 How., 536.
1 Pet., 290.

But the exception is also taken that the instructions were inapplicable to the proof and irrelevant and likely to mislead.

It will be noted that no special instructions were asked, nor any suggestion made that those given were

calculated to mislead, but the error is supposed to be that inasmuch as the "agreement" shown in evidence contained restrictions and qualifications, that the judge should have charged that the agent, by this appointment, could only act within the limitations imposed.

It is true the agent can only bind his principal within the limit of his authority, yet the extent of the power is deducible as well from *facts* as from express delegation.

3 Peters, 413.

In that case (Parsons vs. Armor) the decision turned upon the fact that the letters limiting the power of the agent were shown to the plaintiff, Armor, and he acted upon this knowledge.

So the dissent of C. J. Nelson in the case of North River Bank vs. Aymor was put upon the ground that the plaintiff had notice of the power under which the agent acted.

3 Hill, 262.

So in Longworth vs. Conwell there was an effort to prove a general agency independently of the agreement which constituted the appointment, but it failed.

In that case the court said, if a general agency had been proved by the witnesses it would not change the merit of the case, because here were no *private instructions.* Here the complainant did know the extent of the powers. The limitations of the agent's authority were expressly told to to him.

2 Blackf., 469, 473–4.

If an agent has been held out or enabled to hold himself out as having a different authority from that expressly delegated, the principal will be liable to the extent of the apparent authority.

10 N. H., 543 to 552.

In our case the agreement was private between the

parties—not intended to be disclosed—and never disclosed.

The facts from which the agency was deducible, as also its extent, were proved by the several witnesses whose depositions were read.

They were these:

That Shepherd bought cotton about the same time from various persons in Desha county.

That in all his purchases he represented himself to be the agent of H. E. Bridge & Co.

That in many cases the cotton so bought by Shepherd was shipped on board a steamer called "The Progress."

That this steamer was owned by H. E. Bridge & Co. and came under convoy of a federal gunboat.

That Hicox, one of the partners, came on the Progress and exercised authority over the cotton so shipped by the agent Shepherd.

That M. N. Martin, an acknowledged agent of defendants, was passing through the country enquiring for the cotton bought by Shepherd.

That Martin being the agent to instruct Shepherd, acquiesced in his departure from the written instructions.

And in addition to all this were the representations of Shepherd unobjected to, as evidence, publicly made in connection with the purchase of the cotton, that he was the agent of defendants, and acting under authority.—(pages 14 to 25.)

Here, then, was a distinct apparent, ostensible authority, not dependent on the agreement or instructions, nor derived from them, and ample, uncontroverted evidence of the agency wholly independent of the written agreement.

See Hatch vs. Taylor, 10 N. H., 538 to 549.

Story, par. 137.

How could the dealers know that there was a written authority with restrictions and limitations.

A late English case, Jones, P. O., vs. Bushnel & Jones, is strikingly analogous to ours.

In that case the agency of Bushnel was constituted by an *agreement* between him and Jones in writing. Under that agreement Bushnel was made the manager in London. But the agreement was not disclosed to the dealer, and Jones was not known in the transaction. The credit was not given to him. (In this particular our case has the advantage.)

The agreement authorized Bushnel to check on funds in hand, but restricted him against accepting bills.

The suit was against Jones as an acceptor of a bill really accepted by Bushnel in the name of Bushnel & Co., the style of the London house, and Jones was held liable.

Cockburn, C. J., says: "The case falls within the established principle that if a person employs another as an agent in a character which involves a particular authority he cannot by a secret reservation divest him of that authority."

Law Reports, 12 Q. B., 97.

In our case Shepherd was held out as the manager. His acts illustrated the extent of his authority, corroborated by his representations, and further corroborated by the conduct of the defendants, especially of the defendant Hicox, who not only received the cotton bought but gave fifty cents a pound for some of the plaintiff's.

If there had been no intentional fraud on the part of the defendants they placed their agent in a position to do injury, and the principle is, that they shall suffer rather than another innocent party.

Story, par. 137.

It is true, when there is a written authority, persons dealing with the party holding it are bound to inform themselves of its contents, and to enquire into its limitations.

If, however, the principal, by his declarations or conduct towards the parties dealing with said agent, has authorized the opinion that he had in fact given more extensive powers than were conferred in the writing, the principal ought to be, and would be bound, by the acts of such agent, at least to the extent of the authority which such declarations and conduct have fairly led them to believe did exist.

Ranson vs. Curtis, 19 Ill., 456–477.

This is our case. The conduct of the defendants, in receiving cotton from time to time purchased by Shepherd, imposed him on the public as a general agent to buy cotton, and in the scope of that business to agree upon the price and the delivery. The limitations were mere private instructions.

But the restrictions in the agreement were not imperative. He was to buy on the best possible terms, to be delivered at time and place as may be agreed on. Much was to be left to his discretion—both as to price and delivery.

The object was to buy the cotton, to approximate a price as near as possible among themselves and the terms of delivery. And all this shows that these were simply private instructions, not an essential limitation of the authority.

Page 5.

The defendants further excepted to the charge as to the new contract between Hicox and the plaintiff, and as to the note taken from Shepherd.

4th Exception, page 35.

The instruction on this point was, in substance, that if, at the making of the new contract, a deception was practiced on the plaintiff by a misstatement or suppession of facts, the new contract would not rescind the old.

Page 28.

This instruction is founded on Maples' testimony.
Pages 15–22.

And is founded on principle and authority.
9 Barbour, 150.

Yet again the defendants excepted to the charge as to the evidence of Carleton as to the military occupation.
2d Exception, page 34.

The charge on this point will be found on page 26.

It is based on the rule, more than once recognized by this court, that official acts will be presumed to be rightly done; and where the officer is called to exercise judicial functions or to find facts, the finding cannot be controverted.

In aid of the finding of the special agent was the affidavit of Branch uncontradicted.
Pages 12–13.

Upon this affidavit and the permit the language of the instruction is: "As a matter of law upon the proof in the case as to the condition of the country, and upon the permit granted to Bridge & Co., Desha county was, at the date of the contract, Nov., 1863, within the military occupation of the national forces."
Page 26.
See 14 Pet., 448.

There was a motion for a new trial, based on the affidavits of Butler and Hicon, made subsequent to the trial, alleging surprise.
Pages 29, 30.

There could be no surprise as to the partnership of Butler, for it was a question in issue from the beginning.

Nor as to the testimony of Maples, for what he said orally is contained substantially in his deposition.

Neither of these defendants appeared at the trial, and the effort is to make their case after hearing the plaintiffs'.

D. K. McRAE,
For Deft. in Error.

EXPLANATION.

In the deposition of Sarah L. Stone there is an important misprint.

"To 6th cross-interrogatory witness answers that she sold cotton to Mr. Shepherd in 1865." It should be 1863.

This is apparent, for Shepherd was killed in 1864.

See testimony of Maples, page 22.

Supreme Court of the United States.

DECEMBER TERM, 1869.

BUTLER & HICOX, vs. JOSIAH MAPLES.

The judgment rendered in this case is for the amount due on a sale of 144 Bales of Cotton made by the appellee to one Shepherd, in November, 1863.

Shepherd lived a few miles distant from Maples, the appellee, in the county of Desha, State of Arkansas. He was a general purchaser of cotton in said county, and held himself out as acting and purchasing agent for the firm of H. E. Bridge & Co., then doing business and residing in the City of Memphis, State of Tennessee.

This action was brought against the appellants as members of the firm of Bridge & Co., on the ground that the purchase by Shepherd was made for their benefit, as Shepherd had averred it to be at the time of the purchase.

At the time of this purchase Memphis was and had been for a long period in the quiet occupation of the Federal troops. The situation in Arkansas is thus described by the witness, Branch p. 12, and the facts stated are uncontradicted.

"On Sept. 8, 1863, the Confederate forces evacuated Little Rock and all the county south of the Arkansas river, and fell back through Washington and the southwestern

portion of the State to Red river and into Texas. Washington became the headquarters of the army. In November, 1863, there was not an organized force of Confederates near the Red Fork, in Desha County. Washington is in the southwestern portion of the State. There was not a Confederate "Post" or force nearer than 150 or 200 miles from Red Fork. In the months of October and November, 1863, there were very few, if any, straggling soldiers in that portion of Arkansas on which Red Fork is situated. The citizens generally took the oath of allegiance to the United States, and many, if not most of them, procured what were called protection papers from the United States. On Sept. 27, I left my residence near Red Fork, and went to Texas and returned in November. In all my travels I neither saw nor heard of any Confederate troops east of the Ouachata river."

It was testified to by Carleton, (p. 7,) that at this time he was the Treasury agent, and that upon the authority given to Bridge & Co., by Yeatman, assistant special agent, he had issued to said firm a "permit" to purchase and transmit to market 1500 bales of cotton within the lines of Federal military occupation, first special agency. This agency comprised the District west of the Alleghany, and extending southward, so as to include so much of the States of Alabama, Mississippi, Arkansas, and Louisiana as was occupied by the national forces operating from the north. There was a printed form invariably used. The defendant below, failed to produce this permit, though served with a notice to do so.

Upon the subject of Shepherd's agency for Bridge & Co., it was shown by the deposition of Martin, examined as a witness for defendants, (p. 23,) that in November, 1863, the firm furnished Shepherd with money to purchase cotton; that the instructions to Shepherd were given through

the witness. He then names the price, mode of payment, &c.

He says further, that when he met Shepherd at his home on the Arkansas river, he told him he had purchased all of Josiah Maple's cotton; that as it was a round lot, he had agreed to give him 40 cents a pound. He told him he had disobeyed his instructions in giving over 35 cents, and hesitated about giving him the money sent them by Bridge & Co., fearing he might again disobey the instructions. But upon his promise that in the future he would obey the instructions, he gave him $10,000. He remained with Shepherd some ten days, Shepherd told him of the purchase of several small lots, and the negotiation for two considerable lots, owned by Joseph and James Branch.

The witness states, that he had been the agent of Bridge & Co., for the purchase of cotton in Arkansas and Louisiana, and was governed by the same instructions as had been given to Shepherd through him.

He further states *that he knew of no written power of attorney or instructions from Bridge & Co. to Shepherd*, but that his instructions were given to him by Bridge & Co., through the witness, verbally. (p. 25.)

Maples testifies that Shepherd represented himself as the agent of Bridge & Co., "for the purchase of cotton in this section of the country." He *exhibited no power of attorney or authority*, but represented himself as agent and acted as such."

All the other witnesses speak to the same fact, that in purchasing cotton, Shepherd represented him as the agent of Bridge & Co.

On the death of Shephard, which occurred prior to the institution of the suit, there was found among his papers a power of attorney from Bridges & Co., ~~to have~~ dated 16th October, 1863, by which he was authorized to purchase cotton in Desha county, where he, Shepherd, resided.

The plaintiff below offered this power in evidence on the question of agency. (p. 5.)

Shepherd was to receive "one-eighth part of the nett profits."

The Court instructed the jury—

That the contract of purchase was legal, if made on that portion of the territory within the limits of the military occupation of the national forces operating from the north.

That if the jury believes the testimony as to the location of the Federal forces and garrisons in the region of country where the contract was made, and as to the submission of the inhabitants evidenced by their taking the oath of allegiance and receiving "protection papers," then there was such military occupation as was contemplated by the acts of Congress.

That in addition to this the action of the special agent of the Treasury in granting a "permit to purchase cotton in a designated region, was evidence that the region so designated was so occupied."

That if Shepherd had dealt with the plaintiff, claiming to be agent in the purchase of his cotton alone, the plaintiff would contract at his risk, and if it turned out that he had exceeded his authority, Bridge & Co. would not be bound by the contract, as in this case Shepherd would be a *special agent.*

That if however he went into Desha County to buy cotton, generally representing himself to be the agent of Bridge & Co. to make such general purchases, then he would be claiming to be a general agent, and if really sent there to purchase cotton by Bridge & Co. would be then *general agent.*

"That the principal is bound by all that a general agent does within the scope of the business in which he is em-

ployed as general agent; and even if such general agent should violate special or secret instructions, not disclosed to the party with whom he deals, the principal would still be bound, if the agent's acts were within the scope of the businss in which he was employed, and of his general agency."

That "a party dealing with a general agent, who seeks to hold the principal bound, must show in order to recover that the agent held himself out as a general agent, *and that in fact he was such general agent.*" p. 27.

There were no charges requested by defendants, but they contented themselves with exceptions, p. 29.

The first of which is, that the Court charged that the written authority produced in evidence established Shepherd as the general agent of Bridge & Co.

This is not true in point of fact. The question of special or general agency, was left to the jury, to whom it properly belonged.

Paley on Agency, p. 210.

The charge was not confined to the written power, but extended to all the evidence on this head. The proof shows that at the time of the sale no such writen power was presumed to be in existence. The defendants' own witness, Martin, says that he never knew of any such instrument, and that the instructions to Shepherd were given, verbally, through him.

The second exception complains that the special agent of the Treasury was held to have exercised judicial functions in granting the permit, so as to conclude the question as to the true status of the territory where the contract was made.

This is also erroneous; the condition of the country was distinctly left to the jury, to be determined from the evidence.

After doing this, the Court says: "*But, in addition to this,* the special agent exercised judicial functions in deciding," &c.

Now, whether the functions of this Treasury agent are properly designated as judicial, we need not stop to inquire, as, even if erroneously described, it would be no ground for reversal. The description of the country, as given by the plaintiff's witnesses, *was not attempted to be contradicted by any opposing evidence on part of defendants.* The jury, on the evidence, could have found no other verdict.

The language of the Court is, "that it would be very unjust to hold the party receiving the permit and acting under it responsible for that decision."

The character of these permits has been passed upon by the Court, delivering its opinion through Justice Miller: "It cannot be supposed that this Court can take judicial notice of the varying lines of the Federal army of occupation, but the fact that the proper officers issued these permits for certain parishes must be taken as evidence that they were properly issued, until the contrary is established."

U. S. v. Weed, 5 Wal., 73.

The third exception is as to the legal definition of special and general agency, and its relevancy to the facts of the case.

The charge, as given, is in exact conformity to the definition of all the elementary writers.

1 Parsons on Contracts, p. 39.
Paley on Agency, p. 198.
Story on Agency, § 127.
Johnson vs. Jones, 4 Barb., 372.

It is difficult to understand how it can be said that the charge is erroneous, because irrelevant. The whole ques-

tion of liability rested upon the fact, whether Shepherd's agency was special or general.

In the Brief filed for the appellants, it is objected that the Court erred in not instructing the jury that, though a a principal may be liable under some circumstances for the unauthorized acts of his agent, yet this liability would not exist if the party dealing with the agent had notice of his want of authority.

This is another error of fact, as will be seen by that portion of the charge, at p. 27, where the liability is limited to cases in which the instructions "*were not disclosed to the party.*" Again: in the case put by way of illustration, instructions to agent not to pay more than 30 cents for cotton, the principal would be bound by a purchase at 40, *unless the party selling was aware of the limit.*"

This species of criticism will not be upheld. If the charge was not full enough, the attention of the Court should have been called to the fact by a prayer for an additional charge.

Thus, when it was objected that the Judge, in charging on the subject of a demand, had not instructed the jury that it must be shown that a tender of the price was made.

This Court answered the objection by saying: "It does not appear that any exception was taken at the time of the trial for any omission of this kind. No exception can be taken here which was not *moved for below.*"

Pennock v. Dialogue, 2 Pet., 15.
Barrow v. Reab, 9 How., 370.

Much of the argument in the Brief for appellant is rested upon the ground, that the sale from the plaintiff to Shepherd was illegal, if Shepherd had no permit to purchase, although in so purchasing he acted as agent for Bridge & Co., who had a permit.

The proof shows that the whole territory for 150 to 200 miles south of the locus in quo was at the time of the transaction within the Federal lines. It required no permit to authorize the sale. Even if all the parties had been within the Confederate lines the sale would have been valid. Contracts between Confederates within their lines not entered into for the purpose of aiding the Rebellion, are upheld by this Court. Texas, v White. *et al*, 7 Wal., 700.

Thorington, Smith, 8 Wal.

The permit granted to Bridge & Co. was to enable him to ship the cotton, when purchosed, to a State that always had adhered to the Union.

The proclamation of 16th August, 1861, declaring certain States in insurrection, permitted goods to be transported from such parts of these States as "were occupied and controlled by the forces of the United States."

On 31st March, 1863, by another proclamation, this was revoked, as embarrassing the enforcement of the nonintercourse act of 13th July, 1861; and all "commercial intercourse not licensed and conducted as provided in said act, between the *inhabitants of these States* and the *citizens of other States,*" is declared to be unlawful, and all merchandise carried from *these States* into *other parts of the United States*, without the license of the President, through the Secretary of the Treasury, shall be forfeited.

It would seem to be clear that these proclamations do not reach a trading between parties living in the insurrectionary States, but trade between them and citizens in the adhering States.

The sole necessity of a permit, when given to a party residing in the revolted district, was to enable him to transport his property to an adhering State. Whether the cotton so to be transported was the growth of his own plantation, or whether he purchased it from a neighboring

planter, in no wise affects the matter. Between these two sets of States a line was drawn that could only be passed by a permit from the proper officer; but contracts between parties living on the same side of the line were unaffected by the state of war, provided they were not entered into for the purpose of aiding the revolt.

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